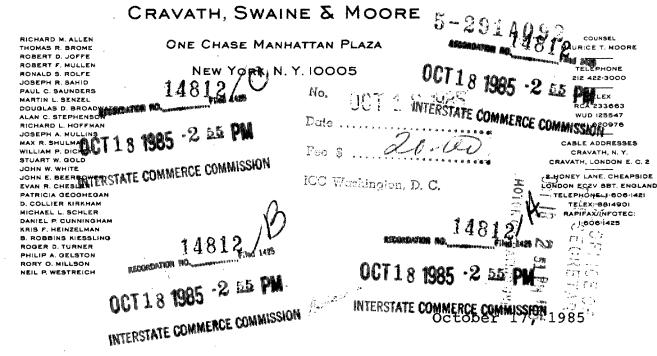
RALPH L. MCAFEE LLEN F. MAULEBY STEWARD R. BROSS, JR. HENRY P. RIORDAN JOHN R. HUPPER SAMUEL C. BUTLER
WILLIAM J. SCHRENK, JR.
BENJAMIN F. CRANE
JOHN F. HUNT GEORGE J. GILLESPIE, III RICHARD S. SIMMONS WAYNE E. CHAPMAN THOMAS D. BARR MELVIN L. BEDRICK ROBERT ROSENMAN JAMES H. DÚFFY ALAN J. HRUSKA JOHN E. YOUNG JAMES M. EDWARDS DAVID G. ORMSBY DAVID L. SCHWARTZ RICHARD J. HIEGEL CHRISTINE BESHAR POBERT S. RIPKIND DAVID BOIES DÁVID O. BROWNWOOD

PAUL M. DODYK



The Detroit Edison Company Lease Financing Dated as of October 1, 1985 11.67% Conditional Sale Indebtedness Due July 2, 2001

Dear Mr. Bayne:

Pursuant to 49 U.S.C. § 11303 and the Commission's rules and regulations thereunder, as amended, I enclose herewith on behalf of The Detroit Edison Company, for filing and recordation counterparts of the following documents:

New number

- A

- 3

- C

- Conditional Sale Agreement dated as of October 1, 1985, between The Bank of New York, as Vendee, and Greenville Steel Car Company, as Builder; and
- Agreement and Assignment dated as of October 1, 1985, between Greenville Steel Car Company, as Builder, and Mercantile-Safe Deposit and Trust Company, as Agent.
- (a) Lease of Railroad Equipment dated as of October 1, 1985, between The Detroit Edison Company, as and; and Lessee, and The Bank of New York, as Wander
- Assignment of Lease and Agreement dated as of October 1, 1985, between The Bank of New York, as Vendee, and Mercantile-Safe Deposit and Trust Company, as Agent.

I cunter auch Michael Coms

The names and addresses of the parties to the aforementioned agreements are as follows:

1. Agent:

Mercantile-Safe Deposit and Trust Company Two Hopkins Plaza Baltimore, Maryland 21203.

2. Vendee-Lessor:

The Bank of New York 48 Wall Street New York, N.Y. 10015

3. Builder-Vendor:

Greenville Steel Car Company Union Street Greenville, Pennsylvania 16125

4. Lessee:

The Detroit Edison Company 2000 Second Avenue Detroit, Michigan 48226

Please file and record the documents referred to in this letter and index them under the names of the Agent, the Vendee-Lessor, the Builder-Vendor and the Lessee.

The equipment covered by the aforementioned documents consist of the following:

610 108 Ton, 4,320 cu. ft. aluminum bodied-steel underframed, rotary dump, gondola rail cars bearing the Lessee's identification numbers DEEX 8101-8710, both inclusive, and also bearing the legend "Ownership Subject to a Security Agreement Filed with The Interstate Commerce Commission".

There is also enclosed a check for \$20 payable to the Interstate Commerce Commission, representing the fee for recording the Conditional Sale Agreement and related Agreement and Assignment (together constituting one document), and the Lease of Railroad Equipment and related Assignment of Lease and Agreement (together constituting one document).

Please stamp all counterparts of the enclosed documents with your official recording stamp. You will wish to retain one copy of the instruments for your files. It is requested that the remaining counterparts be delivered to the bearer of this letter.

Very truly yours,

Laurance V. Goodrich as Agent for The Detroit Edison Company

James H. Bayne, Secretary, Interstate Commerce Commission, Washington, D.C. 20423

Encls.

74812

OCT 1 8 1985 · 2 55 PM

INTERSTATE COMMERCE COMMISSION

[CS&M Ref: 1696-046]

CONDITIONAL SALE AGREEMENT

Dated as of October 1, 1985

between

GREENVILLE STEEL CAR COMPANY

and

THE BANK OF NEW YORK, Vendee

11.67% Conditional Sale Indebtedness due July 2, 2001

[Covering 610 Greenville Rotary Dump Gondola Cars]

Conditional Sale Agreement

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^{*}This Table of Contents has been included in this document for convenience only and does not form a part of or affect any construction or interpretation of this document.

units of Equipment not so excluded herefrom. Pursuant to the Participation Agreement the Lessee has agreed to purchase such excluded Equipment and any Equipment excluded from this agreement pursuant to the first paragraph of Article 4 hereof from the Builder, upon the satisfaction or waiver of any conditions of the Purchase Order, all as provided in Paragraph 1 of the Participation Agreement. Vendee and the Assignee agree, upon any such exclusion, to take such steps, including the execution of instruments of transfer, as may be reasonably requested by the Lessee for the purpose of acknowledging and perfecting the interest of the Lessee in any unit of Equipment so excluded from this Agreement, and the Vendee and the Assignee shall have no further obligation or liability in respect of units so excluded.

The Builder's obligation as to the time of delivery set forth in Annex B is subject, however, to delays resulting from causes beyond the Builder's reasonable control, including but not limited to, acts of God, acts of government such as embargoes, priorities and allocations, war or war conditions, riot or civil commotion, sabotage, strikes, differences with workmen, accidents, fire, flood, explosion, damage to plant, equipment or facilities, delays in receiving necessary materials or delays of carriers or subcontractors.

During construction, the Equipment shall be subject to inspection and approval by the authorized inspectors of the Vendee (who may be employees of the Lessee) and the Builder shall grant to such inspectors reasonable access to its plant. The Builder agrees to inspect the materials used in the construction of the Equipment in accordance with its standard quality control practices. Upon completion of each unit or a number of units of the Equipment, such unit or units shall be presented to an inspector of the Vendee for inspection at the place specified for delivery, and if each such unit conforms to the specifications, requirements and standards applicable thereto, such inspector or an authorized representative of the Vendee (who may be an employee of the Lessee) shall execute and deliver to the Builder a certificate of acceptance (the "Certificate of Acceptance") substantially in the form of Schedule D to the Lease; provided, however, that the Builder shall not thereby be relieved of its warranty referred to in Articles 2 and 13 hereof. By § 2 of the Lease, the Vendee is appointing the Lessee its agent to inspect and accept delivery of the Equipment. Acceptance of any unit of Equipment by the

CONDITIONAL SALE AGREEMENT dated as of October 1, 1985, between GREENVILLE STEEL CAR COMPANY, a Pennsylvania corporation (said corporation being hereinafter called the "Builder" or the "Vendor", as the context may require, all as more particularly set forth in Article 1 hereof) and THE BANK OF NEW YORK, a New York corporation (the "Vendee").

WHEREAS the Builder has agreed to construct, sell and deliver to the Vendee, and the Vendee has agreed to purchase, the railroad equipment described in Annex B hereto to the extent not excluded herefrom under the provisions hereof (the "Equipment");

WHEREAS the Vendee is entering into a Lease of Railroad Equipment with The Detroit Edison Company (the "Lessee") in substantially the form annexed hereto as Annex C (the "Lease") pursuant to which the Lessee will lease from the Vendee all the units of Equipment delivered and accepted hereunder; and

WHEREAS Mercantile-Safe Deposit and Trust Company (hereinafter called the "Assignee" or the "Vendor" as more particularly set forth in Article 1 hereof) is acting as Agent for the institutional investor (the "Investor") named in that certain Participation Agreement dated as of the date hereof (the "Participation Agreement") among the Assignee, the Lessee, the Vendee and the Investor.

NOW, THEREFORE, in consideration of the mutual promises and agreements hereinafter set forth, the parties hereto do hereby agree as follows:

ARTICLE 1. Assignment; Definitions. The parties hereto contemplate that the Vendee will furnish that portion of the Purchase Price (as hereinafter defined) of the Equipment as is required under subparagraph (a) of the third paragraph of Article 4 hereof and that an amount equal to the balance of such Purchase Price shall be paid to the Builder pursuant to an Agreement and Assignment (the "CSA Assignment") dated as of the date hereof between the Builder and the Assignee.

The term "Vendor", whenever used in this Agreement, means, before any assignment of its rights hereunder, the Builder and any successor or successors for the time being to its manufacturing properties and business, and, after any such assignment, both any assignee or

assignees for the time being of such particular assigned rights as regards such rights, and also any assignor as regards any rights hereunder that are retained or excluded from any assignment; and the term "Builder", whenever used in this Agreement, means, both before and after any such assignment, the Builder and any successor or successors for the time being to its manufacturing properties and business.

The parties here to contemplate that the Vendee will assign to the Assignee, as security for the payment and performance of all the Vendee's obligations hereunder, certain rights, title, and interests of the Vendee in and to the Lease, pursuant to an Assignment of Lease and Agreement in the form of Annex D here to (the "Lease Assignment") and the Lessee will consent thereto pursuant to a Consent and Agreement (the "Consent").

ARTICLE 2. Construction and Sale. Pursuant to this Agreement, the Builder shall construct the units of Equipment and will sell and deliver to the Vendee, and the Vendee will purchase from the Builder, and accept delivery of and pay for (as hereinafter provided and subject to the limitations hereinafter set forth), the Equipment, each unit of which shall be constructed in accordance with the Purchase Order and the specifications referred to in Annex B hereto and in accordance with such modifications thereof as may be agreed upon in writing between the Builder, the Vendee and the Lessee (which specifications and modifications, if any, are hereinafter called the "Specifications"). The design, quality and component parts of each unit of the equipment shall conform, on the date of completion of manufacture thereof, to all United States Department of Transportation and Interstate Commerce Commission requirements and specifications and to all standards, if any, recommended by the Association of American Railroads reasonably interpreted as being applicable to railroad equipment of the character of such unit, and each such unit will be new railroad equipment, when delivered.

ARTICLE 3. <u>Inspection and Delivery</u>. The Builder will deliver the units of the Equipment to the Vendee at the

place or places specified in Annex B hereto, freight, storage and insurance charges, if any, to the place of delivery specified in said Annex B prepaid, in accordance with the delivery schedule set forth in Annex B hereto; provided, however, that delivery of any unit of the Equipment shall not be made (i) until this Agreement, the Lease, the CSA Assignment and the Lease Assignment have been filed pursuant to 49 U.S.C. § 11303; (ii) subsequent to the commencement of any proceedings or the occurrence of any event specified in clauses (c) or (d) of Article 15 hereof or the occurrence of any event of default (as described in Article 15 hereof), or event which, with the lapse of time and/or demand, could constitute such an event of default (any such commencement, occurrence, event of default or event being hereinafter in this Agreement called a "Default"); or (iii) if the Purchase Price for such unit when added to the aggregate Purchase Price of (A) all units theretofore delivered and accepted under and made subject to this Agreement and (B) all other units proposed to be delivered and accepted under and made subject to this Agreement concurrently with such unit would exceed the Maximum Purchase Price for the Equipment specified in Item 5 of Annex A hereto (or such higher amount as the Vendee and the Assignee may have agreed to pursuant to Article 4). Builder agrees not to deliver any unit of the Equipment hereunder (a) following receipt of written notice from the Vendee or the Assignee (i) of a Default, or (ii) that there has been a material adverse change in the business prospects or financial condition of the Lessee since the date of the most recent financial statements referred to in Paragraph 4(b) of the Participation Agreement, and (b) until it receives notice from the Vendee and the Assignee that the conditions contained in Paragraphs 7 and 8 of the Participation Agreement have been met.

Any unit of Equipment not delivered at the time of receipt by the Builder of the notice specified in clause (a) of the last sentence of the first paragraph of this Article 3 and any unit of Equipment not delivered and accepted hereunder on or prior to April 30, 1986, by reason of noncompliance with the conditions referred to in the next preceding paragraph or causes set forth in the next succeeding paragraph or otherwise shall be excluded from this Agreement and the Vendee shall be relieved of its obligation to purchase and pay for such unit of Equipment. If any unit of Equipment shall be excluded herefrom pursuant to the immediately preceding sentence, the Vendee and the Builder (and any assignee of the Builder) shall execute an agreement supplemental hereto limiting this Agreement to the

units of Equipment not so excluded herefrom. Pursuant to the Participation Agreement the Lessee has agreed to purchase such excluded Equipment and any Equipment excluded from this agreement pursuant to the first paragraph of Article 4 hereof from the Builder, upon the satisfaction or waiver of any conditions of the Purchase Order, all as provided in Paragraph 1 of the Participation Agreement. The Vendee and the Assignee agree, upon any such exclusion, to take such steps, including the execution of instruments of transfer, as may be reasonably requested by the Lessee for the purpose of acknowledging and perfecting the interest of the Lessee in any unit of Equipment so excluded from this Agreement, and the Vendee and the Assignee shall have no further obligation or liability in respect of units so excluded.

The Builder's obligation as to the time of delivery set forth in Annex B is subject, however, to delays resulting from causes beyond the Builder's reasonable control, including but not limited to, acts of God, acts of government such as embargoes, priorities and allocations, war or war conditions, rio t or civil commotion, sabotage, strikes, differences with workmen, accidents, fire, flood, explosion, damage to plant, equipment or facilities, delays in receiving necessary materials or delays of carriers or subcontractors.

During construction, the Equipment shall be subject to inspection and approval by the authorized inspectors of the Vendee (who may be employees of the Lessee) and the Builder shall grant to such inspectors reasonable access to its plant. The Builder agrees to inspect the materials used in the construction of the Equipment in accordance with its standard quality control practices. Upon completion of each unit or a number of units of the Equipment, such unit or units shall be presented to an inspector of the Vendee for inspection at the place specified for delivery, and if each such unit conforms to the specifications, requirements and standards applicable thereto, such inspector or an authorized representative of the Vendee (who may be an employee of the Lessee) shall execute and deliver to the Builder a certificate of acceptance (the "Certificate of Acceptance") substantially in the form of Schedule D to the Lease; provided, however, that the Builder shall not thereby be relieved of its warranty referred to in Articles 2 and 13 hereof. By § 2 of the Lease, the Vendee is appointing the Lessee its agent to inspect and accept delivery of the Equipment. Acceptance of any unit of Equipment by the

Lessee (or its employees or agents, as aforesaid) pursuant to § 2 of the Lease shall be deemed to be acceptance of such unit by the Vendee hereunder.

Upon delivery and acceptance of each such unit hereunder at the place specified for delivery, the Builder shall have no further responsibility for, nor bear any risk of, any damage to or the destruction or loss of such unit; provided, however, that the Builder shall not thereby be relieved of its warranty referred to in Articles 2 and 13 hereof.

Notwithstanding the foregoing or any other provision of this Agreement to the contrary, the delivery to and acceptance by or on behalf of the Vendee of any unit of Equipment excluded from this Agreement pursuant to the first paragraph of Article 4 hereof shall be ineffective, ab initio, to create in or transfer to the Vendee any legal or beneficial right or interest in such unit or (except as provided in the first paragraph of Article 4 hereof) to impose on the Vendee any liability, obligation or responsibility with respect thereto; any right or interest in any such unit created in or transferred to or purported to be created in or transferred to the Vendee shall be held by the Vendee solely as trustee for the benefit of the Builder.

ARTICLE 4. Purchase Price and Payment. price or prices per unit of the Equipment are set forth in Annex B hereto. Such base price or prices are subject to such increase or decrease as is agreed to by the Builder, the Vendee and the Lessee, including prepaid insurance, storage and freight charges, if any, to the place of delivery specified in said Annex B, but excluding sales The term "Purchase Price" as used herein shall mean taxes. the base price or prices per unit of the Equipment as so increased or decreased as set forth in the Builder's invoice or invoices delivered to the Vendee (the "Invoices") and, if the Purchase Price is other than the base price or prices set forth in Annex B, the Invoices shall be accompanied by, or have endorsed thereon, the agreement or approval of the Lessee and the Vendee. If on any Closing Date the aggregate Purchase Price of the Equipment for which settlement has theretofore been or is then being made would, but for the provisions of this sentence, exceed the Maximum Purchase Price specified in Item 5 of Annex A hereto (or such higher amount as the Vendee and the Assignee may at its option agree to prior to delivery of any unit or units of Equipment that, but for such agreement, would be excluded from this

Agreement), the Builder (and any assignee of the Builder) and the Vendee will enter into an agreement excluding from this agreement such unit or units of Equipment then proposed to be settled for and specified by the Vendee, as will, after giving effect to such exclusion, reduce such aggregate Purchase Price to not more than such Maximum Purchase Price (or such higher amount as aforesaid).

The Equipment shall be settled for in such number of groups of units of the Equipment as is provided in Item 2 of Annex A hereto (each such group being hereinafter called the "Group"). The term "Closing Date" with respect to any Group shall mean such date, which shall be the last business day of any month or such other day as may be established pursuant to the provisions of the first paragraph of Paragraph 2 of the Participation Agreement, but in no event earlier than October 31, 1985, nor later than April 30, 1986, occurring following presentation by the Builder to the Vendee of the Invoices and Certificates of Acceptance for such Group and written notice thereof by the Builder to the Lessee, as shall be fixed by the Lessee by written notice delivered to the Vendee and the Vendor at least five business days prior to the Closing Date designated therein. The term "business day" as used herein means any calendar day, excluding Saturdays, Sundays and any other day on which banking institutions in New York, New York, or Baltimore, Maryland, are authorized or obligated to remain closed.

The Vendee hereby acknowledges itself to be indebted to the Vendor in the amount of, and hereby promises to pay in immediately available funds to the Vendor at such place as the Vendor may designate, the Purchase Price of the equipment, as follows:

- (a) on the Closing Date with respect to the Group an amount equal to 45.0177504% of the aggregate Purchase Price of the Group; and
- (b) in 15 installments, as hereinafter provided, an amount equal to the aggregate Purchase Price of the units of equipment, less the aggregate amount paid or payable with respect thereto pursuant to subparagraph (a) of this paragraph.

The portion of the Purchase Price payable pursuant to subparagraph (b) of the preceding paragraph (the "CSA Indebtedness") shall be payable on the dates set forth in Schedule I hereto commencing July 2, 1987, with a final payment due on July 2, 2001, (or, if any such date is not a

business day, on the next preceding business day). unpaid principal of the CSA Indebtedness from time to time outstanding shall bear interest at the rate of 11.67% per Interest accrued on the CSA Indebtedness shall be due and payable in arrears on each January 2 and July 2 commencing on July 2, 1986. The installments of principal payable on each payment date shall be calculated so that the amount and allocation of principal and interest payable on each payment date shall be substantially in proportion to the allocation set forth in Schedule I hereto (subject to the provisions of Article 7 hereof) and the aggregate of such installments of principal will completely amortize the The Vendee will furnish to the Vendor and CSA Indebtedness. the Lessee promptly after the last Closing Date a schedule showing the respective amounts of principal and interest payable on each payment date.

Interest under this Agreement shall be determined on the basis of a 360-day year of twelve 30-day months.

The Vendee will pay, to the extent legally enforceable, interest upon all amounts remaining unpaid on the certificates after the same shall have become due and payable pursuant to the terms hereof at the rate of 12.67% per annum (the "Overdue Rate").

All payments provided for in this Agreement shall be made in such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts. Except as provided in Article 7 hereof, the Vendee shall not have the privilege of prepaying any portion of the CSA Indebtedness prior to the date it becomes due.

Notwithstanding any other provision of this Agreement (including, but not limited to, any provision of Articles 15 and 16 hereof), but not limiting the effect of Article 21 hereof, the liability of the Vendee or any assignee of the Vendee for all payments to be made by it under this Agreement, including any liability arising out of or in connection with the performance of its obligations hereunder (and excluding only the obligation to pay interest on the CSA Indebtedness accrued to July 2, 1986, the obligations set forth in the proviso in the third paragraph of Article 12 hereof and the payments to be made pursuant to subparagraph (a) of the third paragraph of this Article) shall not exceed an amount equal to, and shall be payable only out of, the "income and proceeds from the Equipment" (as hereinafter defined), and such payments shall be made by

the Vendee only to the extent that the Vendee (or any such assignee) shall have actually received sufficient "income and proceeds from the Equipment" to make such payments. Except as provided in the next preceding sentence, the Vendee (and any such assignee) shall have no personal liability to make any payments under this Agreement except from the "income and proceeds from the Equipment". As used herein the term "income and proceeds from the Equipment" shall mean (i) if one of the events of default specified in Article 15 hereof shall have occurred and while it shall be continuing, so much of the following amounts as are indefeasibly received by the Vendee (or any such assignee) at any time after any such event and during the continuance (a) all amounts of rental and amounts in respect of Casualty Occurrences and any Termination (as such terms are defined in Article 7 hereof) paid for or with respect to the Equipment pursuant to the Lease and any and all other payments received under § 10 or any other provision of the Lease (other than any Excluded Payments as defined in the Lease Assignment), and (b) any and all payments or proceeds received for or with respect to the Equipment as the result of the sale, lease or other disposition thereof, after deducting all costs and expenses of such sale, lease or other disposition, and (ii) at any other time only that portion of the amounts referred to in the foregoing clauses (a) and (b) as are indefeasibly received by the Vendee (or any such assignee) and as shall equal the portion of the CSA Indebtedness (including repayments thereof required in respect of Casualty Occurrences and any Termination) and/or interest thereon due and payable on the date such amounts were required to be paid pursuant to the Lease or as shall equal any other payments then due and payable under this Agreement; it being understood that "income and proceeds from the Equipment" shall in no event include amounts referred to in the foregoing clauses (a) and (b) received by the Vendee (or any such assignee) prior to the existence of such an event of default which exceeded the amounts required to discharge that portion of the CSA Indebtedness (including such pre-payments) and/or interest thereon due and payable on the date on which amounts with respect thereto received by the Vendee (or any such assignee) were required to be paid to it pursuant to the Lease or which exceeded any other payments due and payable under this Agreement at the time such amounts were payable under the Lease. Notwithstanding anything to the contrary contained in this Agreement, in the event the Vendor shall obtain a judgment against the Vendee for an amount in excess of the amounts payable by the Vendee pursuant to the limitations set forth in this paragraph, the

Vendor will limit its execution of such judgment to amounts payable pursuant to the limitations set forth in this paragraph. Nothing contained in this Article 4 shall prevent the Vendor from enforcing and retaining the proceeds of any personal recourse obligation of the Vendee under the Participation Agreement. Nothing contained herein limiting the liability of the Vendee shall derogate from the right of the Vendor to proceed against the equipment or against the Lessee under and as provided in the Lease and the Lease Assignment for the full unpaid Purchase Price of the Equipment and accrued interest thereon and all other payments and obligations hereunder.

ARTICLE 5. Security Interest in the Equipment. The Vendor shall and hereby does retain a security interest in the Equipment until the Vendee shall have made all its payments under this Agreement, notwithstanding any provision of this Agreement limiting the liability of the Vendee and notwithstanding the delivery of the Equipment to and the possession and use thereof by the Vendee and the Lessee as provided in this Agreement and the Lease. Any and all parts installed on and additions and replacements made to any unit of the Equipment which shall constitute accessions to the Equipment pursuant to § 9.3 of the Lease and shall be subject to all the terms and conditions of this Agreement and included in the term "Equipment" as used in this Agreement.

Except as otherwise specifically provided in Article 7 hereof, when and only when the Vendor shall have been paid the full indebtedness in respect of the Purchase Price of the Equipment, together with accrued interest and all other payments as herein provided, absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Vendee without further transfer or action on the part of the Vendor. However, the Vendor, if so requested by the Vendee at that time, will (a) execute an instrument releasing its security interest in the Equipment and transferring such interest to the Vendee or upon its order, free of all liens, security interests and other encumbrances created or retained hereby or otherwise created by the Vendor and deliver such instrument to the Vendee at its address referred to in Article 20 hereof, (b) execute and deliver at the same place, for filing in all necessary public offices, such instrument or instruments in writing as may be necessary or appropriate in order then to make clear upon the public records the title of the Vendee to the Equipment and (c) pay to the Vendee any money paid to the Vendee pursuant to Article 7 hereof and not theretofore applied as provided therein. The Vendee hereby waives and releases any and all rights existing or that may be acquired in or to the payment of any penalty, forfeit or damages for failure to execute and deliver such instrument or instruments or to file any certificate of payment in compliance with any law or statute requiring the filing of the same, except for failure to execute and deliver such instrument or instruments or to file such certificate within a reasonable time after written demand by the Vendee.

Taxes. Whether or not any of the ARTICLE 6. transactions contemplated hereby are consummated, the Vendee will pay, or cause to be paid, and will indemnify and hold the Vendor harmless from, all Taxes (as defined in § 6 of the Lease) for which indemnification is required by the Lessee under the Lease excluding, however: (i) Taxes of the United States of America or any state or political subdivision thereof imposed on or measured solely by the net income or excess profits of the Vendor, or value-added taxes in lieu of any such net income or excess profits taxes, other than Taxes arising out of or imposed in respect of the receipt of indemnification payments pursuant to this Agreement; and (ii) any Taxes imposed on or measured by any fees or compensation received by the Vendor; provided, however, that the Vendee shall not be required to pay any Taxes during the period it may be contesting the same in the manner provided in the next paragraph below.

If claim is made against the Vendor for any Taxes indemnified against under this Article 6, the Vendor shall promptly notify the Vendee and the Lessee. If reasonably requested by the Vendee in writing and so long as the Lessee is prohibited or impaired from doing so in its own name, the Vendor shall, upon receipt of any indemnity reasonably satisfactory to it for all costs, expenses, losses, legal and accountants' fees and disbursements, penalties, fines, additions to tax and interest, and at the expense of the Vendee, contest in good faith the validity, applicability or amount of such Taxes by (a) resisting payment thereof if legally permissible (provided that the nonpayment thereof does not, in the opinion of the Vendor, adversely affect the interest of the Vendor in and to the Equipment hereunder), (b) not paying the same except under protest, if protest is necessary and proper, and (c) if payment is made, using reasonable efforts to obtain a refund thereof in appropriate administrative or judicial proceedings, or both. The Vendee may also contest, at its own expense, the validity, applicability or amount of such Taxes in the name of the Vendor; provided, however, that no proceeding or action relating to such contest shall be commenced (nor shall any pleading, motion, brief or other paper be submitted or filed in the name of the Vendor in any such proceeding or action) without the prior written consent of the Vendor. If the Vendor shall obtain a refund of all or any part of such

Taxes previously reimbursed by the Vendee in connection with any such contest or an amount representing interest thereon, the Vendor shall pay the Vendee the amount of such refund or interest net of expenses; provided, however, that no event of default set forth in Article 15 hereof and no event which with notice or lapse of time or both would constitute such an event of default shall have occurred and be continuing.

In case any report or return is required to be made with respect to any obligation of the Vendee under or arising out of this Article 6, the Vendee shall either make such report or return in such manner as will show the interests of the Vendor in the Equipment or shall promptly notify the Vendor of such requirement and shall make such report or return in such manner as shall be reasonably satisfactory to the Vendor. All costs and expenses (including legal and accountants' fees) of preparing any such return or report shall be borne by the Vendee.

ARTICLE 7. Maintenance, Termination and Casualty Occurrences. The Vendee shall, at its own cost and expense, maintain, service, repair and/or overhaul, as necessary, each unit of equipment so that each unit of Equipment will remain (a) in good operating condition (ordinary wear and tear excepted) for its intended purpose, (b) in compliance with any and all applicable laws and regulations and all mandatory safety bulletins issued by the Builder applicable to the equipment, and (c) meet the standards then in effect under the interchange rules of the American Association of Railroads.

In the event that the Lease is terminated pursuant to § 7.8 of the Lease (a "Termination") or any unit of the Equipment shall suffer a Casualty Occurrence (as defined in § 7.2 of the Lease) the Vendee shall, promptly after it shall have received notice from the Lessee or has otherwise been informed of a Termination or it shall have determined that such unit has suffered a Casualty Occurrence, cause the Vendor to be fully informed in regard thereto. Casualty Payment Date (as defined in § 7.2 of the Lease) next succeeding such notice on or after the Casualty Occurrence or on the Termination Date (as defined in § 7.8 of the Lease) in the case of a Termination (each such date being hereinafter called a "Settlement Date"), the Vendee shall pay to the Vendor (i) in the case of a Casualty Occurrence, an amount equal to the Casualty Value (as hereinafter defined in this Article) of such unit suffering a Casualty Occurrence as of such Settlement Date and (ii) in the case of a Termination, a sum equal to the Termination

Value (as hereinafter defined in this Article 7) of such unit subject to such Termination as of such Settlement Date. The Vendee shall file, or cause to be filed, with the Vendor a certificate setting forth the Casualty Value of such unit or the Termination Value of such unit, as the case may be. Any money paid to the Vendor pursuant to this paragraph shall be applied (after the payment of the interest and principal, if any, on and of the CSA Indebtedness due on such date) to prepay the installments of the CSA Indebtedness (ratably in accordance with the unpaid balance of each such installment) together with all unpaid and accrued interest thereon, and the Vendee will promptly furnish to the Vendor and the Lessee a revised schedule of payments of principal and interest with respect to the CSA Indebtedness thereafter to be made. Concurrently with the payment of Termination Value for any unit effected by a Termination, the Vendee shall pay to the Vendor as a premium, the percentage of the principal amount of the CSA Indebtedness being prepaid in connection therewith, depending on the Settlement Date on which such prepayment occurs, as follows:

Settlement Date	Premium	
1/2 or 7/2/96	5%	
1/2 or 7/2/97	4	
1/2 or 7/2/98	3	
1/2 or 7/2/99	2	
1/2 or 7/2/00	. 1	
1/2/01	0 .	

In the event of the requisition of use by any governmental authority of any unit of the Equipment not constituting a Casualty Occurrence, all of the Vendee's obligations hereunder with respect to such unit shall continue to the same extent as if such requisition had not occurred.

Upon payment by the Vendee to the Vendor (i) of the Casualty Value of any unit of the Equipment having suffered a Casualty Occurrence or (ii) of the Termination Value of any unit in connection with a Termination, absolute right to the possession of, title to and property in such unit shall pass to and vest in the Vendee, without further transfer or action on the part of the Vendor, except that the Vendor, if requested by the Vendee, will execute and deliver to the Vendee, at the expense of the Vendee, an appropriate instrument confirming the release of the Vendor's security interest in such unit, in recordable form,

in order that the Vendee may make clear upon the public records the title of the Vendee to such unit.

The Casualty Value of each unit of the Equipment suffering a Casualty Occurrence shall be deemed to be that portion of the original Purchase Price thereof referred to in subparagraph (b) of the third paragraph of Article 4 hereof remaining unpaid on the Settlement Date with respect to such unit (without giving effect to any prepayment or prepayments theretofore made under this Article with respect to any other unit), plus interest accrued thereon but unpaid as of such Settlement Date. For the purpose of this paragraph, each payment of the Purchase Price in respect of Equipment made pursuant to Article 4 hereof shall be deemed to be a payment on each unit of the Equipment in like proportion as the original Purchase Price of such unit bears to the aggregate original Purchase Price of the Equipment.

The Termination Value of any unit shall be equal to the Casualty Value thereof.

The Vendee will cause the Equipment to be insured as provided in § 7.6 of the Lease. If the Vendor shall receive any insurance proceeds or condemnation payments in respect of such units suffering a Casualty Occurrence, the Vendor shall, subject to having received payment of the Casualty Value and provided no Default shall have occurred and be continuing, pay such insurance proceeds or condemnation payments to the Vendee. All insurance proceeds or condemnation payments received by the Vendor in respect of any unit of Equipment not suffering a Casualty Occurrence shall be paid to the Vendee upon reasonable proof satisfactory to the Vendor that any damage to such unit in respect of which such proceeds were paid has been fully repaired so as to comply with the provisions of the first paragraph of this Article 7, provided no Default shall have occurred and be continuing.

ARTICLE 8. Reports and Inspections. On or before April 30 in each year, commencing with the year 1986, the Vendee shall cause to be furnished to the Vendor an accurate statement to the effect set forth in § 8 of the Lease.

ARTICLE 9. Marking of Equipment. The Vendee will cause each unit of the Equipment to be kept numbered and marked as provided in § 5 of the Lease. The Vendee will not permit any such unit to be placed in operation or exercise any control or dominion over the same until such markings

shall have been made thereon and will replace or will cause to be replaced promptly any such markings which may be removed, obliterated, defaced or destroyed. The Vendee will not permit the identification number of any unit of the Equipment to be changed except in accordance with a statement of new number or numbers to be substituted therefor, which statement previously shall have been filed with the Vendor and filed and deposited by the Vendee in all public offices where this Agreement shall have been filed and deposited.

Except as provided in the immediately preceding paragraph, the Vendee will not allow the name of any person, association or corporation to be placed on any unit of the Equipment as a designation that might be interpreted as a claim of ownership; provided, however, that the Equipment may be lettered with the names or initials or other insignia customarily used by the Lessee thereof or its affiliates.

During the term of this Agreement, the Vendee will comply, and will cause every lessee or user of the Equipment to comply, in all respects (including, without limitation, with respect to the use, maintenance and operation of the Equipment) with all Applicable Laws (as defined in § 9 of the Lease) and in the event that any Applicable Laws require any alteration, replacement, addition or modification of or to any part on any unit of the Equipment, the Vendee will conform therewith at its own expense; provided, however, that the Vendee or the Lessee may, in good faith, contest the validity or application of any such law or rule in any reasonable manner which does not, in the reasonable opinion of the Vendor, adversely affect the property or rights of the Vendor under this Agreement.

ARTICLE 11. Possession and Use. The Vendee, so long as an event of default shall not have occurred and be continuing under this Agreement, shall be entitled, from and after delivery of the equipment to the Vendee, to the possession of the Equipment and the use thereof, but only upon and subject to all the terms and conditions of this Agreement.

The parties hereto acknowledge that the Vendee simultaneously is leasing the Equipment to the Lessee as provided in the Lease, and the rights of the Lessee and its permitted assigns under the Lease shall be subordinated and junior in rank to the rights, and shall be subject to the remedies, of the Vendor under this Agreement.

ARTICLE 12. Prohibition Against Liens. Vendee will pay or discharge any and all sums claimed by any party from, through or under the Vendee or its successors or assigns which, if unpaid, might become a lien, charge or security interest on or with respect to the Equipment, or any unit thereof, or the interest of the Vendor therein, or the Vendee's interests in the Lease and the payments to be made thereunder and will promptly discharge any such lien, charge or security interest which arises, but shall not be required to pay or discharge any such claim so long as the validity thereof shall be contested in good faith and by appropriate legal or administrative proceedings in any reasonable manner and the nonpayment thereof does not, in the reasonable opinion of the Vendor, materially and adversely affect the title or interests of the Vendor in or to the Equipment or the Lease or otherwise under this Agreement. Any amount paid by the Vendor in discharge of such liens, charges or security interests upon the Equipment or the Lease shall be secured by and under this Agreement.

This covenant will not be deemed breached by reason of liens for taxes, assessments or governmental charges or levies, in each case not due and delinquent, or undetermined or inchoate materialmen's, mechanics', workmen's, repairmen's or other like liens arising in the ordinary course of business and, in each case, not delinquent.

The foregoing provisions of this Article 12 shall be subject to the limitations set forth in the last paragraph of Article 4 hereof and the provisions of Article 21 hereof; provided, however, that the Vendee will pay or discharge any and all claims, liens, charges or security interests claimed by any party from, through or under the Vendee not arising out of the transactions contemplated hereby (but including tax liens arising out of the receipt of rentals and other payments under the Lease and other proceeds from the Equipment) which, if unpaid, might become a lien, charge or security interest on or with respect to the Equipment, or any unit thereof, or the Vendee's interest in the Lease and the payments to be made thereunder, but the Vendee shall not be required to pay or discharge any such claim so long as the validity thereof shall be contested in good faith and by appropriate legal or administrative proceedings in any reasonable manner and the nonpayment thereof does not, in the reasonable opinion of the Vendor, materially and adversely affect the security interest of the Vendor in or to the Equipment or otherwise under this Agreement or in and to the Lease and the payments to be made thereunder.

ARTICLE 13. Indemnities and Warranties. The Vendee agrees to indemnify, protect and hold harmless the Vendor its successors, assigns, agents and servants (the "Indemnified Persons") from and against all Indemnified Matters (as defined in § 9.4 of the Lease) except however, in the case of the Builder, any losses, damages, injuries, liabilities, claims and demands whatsoever arising out of any breach of warranty or failure to perform any covenant hereunder by the Builders. This covenant of indemnity shall continue in full force and effect notwithstanding the full payment of the indebtedness in respect of the Purchase Price of, and the release of the Vendor's security interest in, the Equipment, as provided in Article 5 hereof, or the termination of this Agreement in any manner whatsoever.

The Vendee will bear the responsibility for and risk of, and shall not be released from its obligations hereunder (except as provided in Article 21 hereof) in the event of, any damage to or the destruction or loss of any unit of or all the Equipment.

The Builder represents and warrants to the Vendee that, at the time of delivery and acceptance of each unit of Equipment under this Agreement, the Vendee will have good and marketable title to such unit, free and clear of all claims, liens, security interests and other encumbrances of any nature except only the rights of the Vendor under this Agreement and the rights of the Lessee under the Lease.

The agreements of the parties relating to the Builder's warranty of material and workmanship and patent indemnification, and the agreement of the parties relating to the Builder's limitation of liability, are set forth in Items 3 and 4 of Annex A hereto. Such warranties and covenants of patent indemnity shall continue in full force and effect notwithstanding the full payment of all sums due under this Agreement or the satisfactory discharge or termination of this Agreement in any manner whatsoever.

The Builder hereby represents and warrants to the Vendee that this Agreement has been duly authorized by the Builder and lawfully executed and delivered by it for a valid consideration and that, execution and delivery by the insofar as the Builder is concerned, a legal, valid and binding instrument, enforceable against the Builder in accordance with its terms.

The Builder represents that it is not entering into this Agreement, or into any other transaction

contemplated by the Participation Agreement, directly or indirectly in connection with any arrangement or understanding by it in any way involving any employee benefit plan (other than a governmental plan) with respect to which it, or, insofar as is known to it, any party to the Participation Agreement is a party in interest, all within the meaning of the Employee Retirement Income Security Act of 1974, as amended.

ARTICLE 14. Assignments. The Vendee will not, except as provided in Article 11 hereof, transfer the right to possession of any unit of the Equipment, or sell, assign or otherwise dispose of any of its rights under this Agreement, except that all, or any part which is at least 25%, of the right, title and interest of the Vendee in and to the Equipment, this Agreement and the Lease may be assigned, conveyed or transferred by the Vendee to (a) any bank, trust company, insurance company or other financial institution organized under the laws of the United States or any state and having a combined capital and surplus or net worth, as the case may be, of at least \$50,000,000, (b) any other company having a net worth of at least \$50,000,000 which at the time of transfer has outstanding publicly held debt securities rated A or better by a nationally recognized rating service or which, within one year prior to such transfer, has received such a rating on any debt issued by such company, in each case not dependent on an unaffiliated third party credit support or (c) any corporation which is an affiliate or subsidiary, wholly owned or otherwise, of the Vendee (any such institution or corporation to whom such interest may be assigned, conveyed or transferred being hereinafter referred to as the "Transferee"); provided, however, that no more than three such transfers may be made by the original Vendee and each Transferee may only transfer all, but not less than all, its such interest to a single Notwithstanding the immediately preceding Transfereek sentence, if the transfer occurs pursuant to (c) above, the transferor shall remain secondarily liable for all obligations of the Transferee unless the Transferee shall have a net worth of at least \$50,000,000 at the time of the transfer or, prior to the transfer, the Vendee enters into an amendment of this Agreement, in form and substance satisfactory to the Agent, to the effect that it will constitute an event of default under this Agreement if, without the prior written consent of the Agent, the Transferee while still the owner of such right, title and interest in and to the Equipment, this Agreement and the Lease at any time ceases to be a member of the Vendee's affiliate group includible in the consolidated Federal income tax return of such group or a member of another parent company's affiliate group includible in the consolidated Federal income tax return of such group in respect of which the parent company meets the conditions

fider C-17 set forth in clause (a) or (b) of the first sentence of this In the event of any such assignment, conveyance paragraph. or transfer, the Transferee shall become a party to each of the Vendee's Documents and will agree to be bound by all the terms of and will undertake all of the obligations of the Vendee contained in its Documents in such manner as is satisfactory to the Lessee and the Agent. Nothing contained herein shall be deemed to restrict, or require any person's (including without limitation, the Builder, the Vendor, or the Investor) consent to, the merger or consolidation of the Vendee into or with any other person; provided, however, that the surviving entity shall meet the conditions set forth in clause (a) or (b) of the first sentence of this paragraph 🗸

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All or any of the rights, benefits and advantages of the Vendor under this Agreement, including the right to receive the payments herein provided to be made by the Vendee, may be assigned by the Vendor and reassigned by any assignee at any time or from time to time. No such assignment shall subject any assignee to, or relieve the Builder from, any of the obligations of the Builder to construct and deliver the Equipment in accordance herewith or to respond to its warranties and indemnities referred to in Article 13 hereof, or relieve the Vendee of its obligations to the Builder contained in Articles 2, 3, 4, 6 and 13 hereof, Annex A hereto and this Article 14, or any other obligation which, according to its terms or context, is intended to survive an assignment.

Upon any such assignment, either the assignor or the assignee shall give written notice to the Vendee and the Lessee, together with a copy of such assignment, stating the identity and post office address of the assignee, and such assignee shall, by virtue of such assignment, acquire all the assignor's right, title and interest in and to the Equipment and this Agreement, or in and to a portion thereof, as the case may be, subject only to such reservations as may be contained in such assignment. From and after the receipt by the Vendee of the notification of any such assignment, all payments thereafter to be made by the Vendee under this Agreement shall, to the extent so assigned, be made to the assignee at such address as it may direct.

The Vendee recognizes that this Agreement will be assigned to the Assignee as provided in the CSA Assignment. The Vendee expressly represents, for the purpose of assurance to any person, firm or corporation considering the acquisition of this Agreement or of all or any of the rights of the Vendor hereunder, and for the purpose of inducing such acquisition, that the rights of the assignee to the entire unpaid indebtedness in respect of the Purchase Price of the Equipment or such part thereof as may be assigned

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and, provided, however, that such a transfer may be made to an entity which does not meet the conditions of clause (a) or (b) with the consent of the Vendor, which consent shall not be unreasonably withheld.

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, except that in the case of clause (b) the surviving entity shall not be required to meet the rating conditions set forth therein.

together with interest thereon, as well as any other rights hereunder which may be so assigned, shall not be subject to any defense, setoff, counterclaim or recoupment whatsoever arising out of any breach of any obligation of the Builder with respect to the Equipment or the construction, delivery or warranty thereof, or with respect to any indemnity herein contained, nor subject to any defense, setoff, counterclaim or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to the Vendee or the Lessee by the Builder. Any and all such obligations, howsoever arising, shall be and remain enforceable by the Vendee or the Lessee against and only against the Builder.

ARTICLE 15. <u>Defaults</u>. In the event that any one or more of the following events of default shall occur and be continuing:

- (a) the Vendee shall fail to pay in full any sum payable by the Vendee when payment thereof shall be due hereunder (irrespective of the provisions of Article 4 or 21 hereof or any other provision of this Agreement limiting the liability of the Vendee) and such default shall continue for 10 business days after the date such payment is due and payable; or
- default shall be made in the observance or performance of any other of the conditions and agreements on the part of the Vendee (irrespective of the provisions of Article 4 or 21 hereof or any other provision of this Agreement limiting the liability of the Vendee) or the Lessee contained herein or in the Participation Agreement or the Lease Assignment or the Consent, and such default shall continue for 30 days after the earlier of (i) written notice from the Vendor to the Vendee specifying the default and demanding that the same be remedied and (ii) the date on which such default shall first become known to any responsible officer of the Vendee (the term "known to any responsible officer of the Vendee" shall mean actual knowledge by a responsible officer of the Vendee having responsibility for the transaction contemplated hereby); or
- (c) a petition for reorganization under Title 11 of the United States Code, as now constituted or as hereafter amended, shall be filed by or against the Lessee and, unless such petition shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Lessee under the Lease and the Consent shall not have been and shall not

continue to be duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees appointed (whether or not subject to ratification) in such proceedings in such manner that such obligations shall have the same status as expenses of administration and obligations incurred by such trustee or trustees within 60 days after such petition shall have been filed and otherwise in accordance with the provisions of 11 U.S.C. § 1168, or any successor provision, as the same may hereafter be amended; or

- any other proceeding shall be commenced by or against the Vendee or the Lessee for any relief which includes or might result in any modification of the obligations of the Vendee hereunder or the Lessee under the Lease or under the Consent under any bankruptcy or insolvency laws or laws relating to the relief of debtors, readjustment of indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit any readjustment of such obligations), and, unless such proceedings shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all such obligations shall not have been and shall not continue to be duly assumed in writing within 60 days after such proceedings shall have been commenced, pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed (whether or not subject to ratification) for the Vendee or the Lessee, as the case may be, or for their respective property in connection with any such proceedings in such manner that such obligations shall have the same status as expenses of administration and obligations incurred by such trustee or trustees or receiver or receivers; or
- (e) the Vendee shall make or permit any unauthorized assignment or transfer of this Agreement or any interest herein or any unauthorized transfer of the right to possession or use of any unit of the Equipment and the Vendee shall, for more than 30 days after demand in writing by the Vendor, fail to secure a reassignment or retransfer to the Vendee of such Agreement, interest or right; or
- (f) an Event of Default shall have occurred and be continuing under the Lease (other than an Event of Default relating to Excluded Payments) unless the Vendee shall have cured such Event of Default and the corresponding event of default hereunder within the later to occur of (1) the expiration of all applicable grace periods, or (2) the tenth business day following

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the giving of written notice to the Vendee that such Event of Default has occurred and is continuing; provided, however, that if more than four Events of Default or if more than two consecutive Events of Default shall have occurred under clause (A) of § 10.1 of the Lease which corresponds to an event of default under Section 15 (a) hereof, any such Event of Default shall be an event of default hereunder whether or not the corresponding event of default hereunder is cured;

then at any time after the occurrence of such an event of default and so long as such event of default is continuing the Vendor may, upon written notice to the Vendee and the Lessee and upon compliance with any legal requirements then in force and applicable to such action by the Vendor, declare (herein called a "Declaration of Default") the entire unpaid CSA Indebtedness, together with the interest thereon then accrued and unpaid, immediately due and payable, without further demand, and thereafter the aggregate of the unpaid balance of the CSA Indebtedness and interest shall bear interest from the date of such Declaration of Default at the Overdue Rate, to the extent legally enforceable. In addition, if the Vendee does not pay the entire unpaid CSA Indebtedness, together with the interest thereon accrued and unpaid to the date of payment with 15 days of such notice of Declaration of Default, the Vendor may, subject to the Lessee's rights of possession, use and assignment under §§ 4 and 12 of the Lease, cause the term of the Lease immediately upon such notice to terminate. Such termination shall not be in derogation of or impair the rights of the Vendee or the Agent (under the assignment thereof), as the case may be, to enforce compliance by the Lessee with any of its covenants and agreements under the Lease or to enforce any of its rights and remedies under § 10 of the Lease (subject to the Agent's rights to repossess and sell the Equipment as provided in this Agreement), including the rights of the Vendee or the Agent (under the assignment thereof), as the case may be, to sue for and recover damages provided for in § 10 of the Lease upon the occurrence of an Event of Default under the Lease. Upon a Declaration of Default, subject to Article 4 hereof, the Vendor shall be entitled to recover judgment for the entire unpaid balance of the CSA Indebtedness so payable, with interest as aforesaid, subject to the provisions of Articles 4 and 21 hereof, and to collect such judgment out of the "income and proceeds of the Equipment" wherever situated.

The Vendor may, at its election, waive any such event of default hereunder and its consequences and rescind

and annul any Declaration of Default or notice of termination of the Lease by notice to the Vendee and the Lessee in writing to that effect, and thereupon the respective rights of the parties shall be as they would have been if no such event of default had occurred and no Declaration of Default or notice of termination of the Lease had been made or given. Notwithstanding the provisions of this paragraph, it is expressly agreed by the Vendee that time is of the essence of this Agreement and that no such waiver, rescission or annulment shall extend to or affect any other or subsequent default or impair any rights or remedies consequent thereon.

ARTICLE 16. Remedies. Subject to the Lessee's rights of possession, use and assignment under §§ 4 and 12 of the Lease, at any time during the continuance of a Declaration of Default, the Vendor may, and upon such further notice, if any, as may be required for compliance with any mandatory legal requirements then in force and applicable to the action to be taken by the Vendor, take or cause to be taken, by its agent or agents, immediate possession of the Equipment, or any portion thereof, without liability to return to the Vendee any sums theretofore paid and free from all claims whatsoever, except as hereinafter in this Article 16 expressly provided, and may remove the same from possession and use of the Vendee or any other person and for such purpose may enter upon the premises of the Vendee or any other premises where the Equipment may be located and may use and employ in connection with such removal any supplies, services and aids and any available trackage and other facilities or means of the Vendee, subject to all mandatory requirements of due process of law.

In case the Vendor shall demand possession of the Equipment pursuant to this Agreement and shall designate a reasonable point or points for the delivery of the Equipment to the Vendor, the Vendee shall, at its own expense and risk:

(a) forthwith and in the usual manner (including but not by way of limitation, giving prompt telegraphic and written notice to the Association of American Railroads and all railroads to which any units of Equipment have been interchanged or which may have possession thereof to return such unit so interchanged) cause the Equipment to be placed upon such storage tracks at such site or sites as the Vendor may reasonably designate; and

(b) permit the Vendor to store the Equipment on such tracks at the risk of the Vendee without charge for insurance, rent or storage until the Equipment has been sold, leased or otherwise disposed of by the Vendor; and

During any storage period referred to in clauses (a) and (b), above, the Vendee will, at its own cost and expense, insure (to the same extent as provided in § 7.6 of the Lease), maintain and keep each such unit in good order and repair (to the same extent as provided in the first paragraph of Article 7 hereof) and will permit the inspection of the Equipment by the Vendor, the Vendor's representatives and prospective purchasers, lessees and users. agreement to deliver the Equipment and furnish facilities as hereinbefore provided is of the essence of the agreement between the parties, and, upon application to any court of equity having jurisdiction, the Vendor shall be entitled to a decree against the Vendee requiring specific performance The Vendee hereby expressly waives any and all claims against the Vendor and its agent or agents for damages of whatever nature in connection with any retaking of any unit of the Equipment in any reasonable manner.

At any time during the continuance of a Declaration of Default, the Vendor (after retaking possession of the Equipment as hereinbefore in this Article 16 provided) may, at its election and upon such notice as is hereinafter set forth, retain the Equipment in satisfaction of the entire CSA Indebtedness and make such disposition thereof as the Vendor shall deem fit. Written notice of the Vendor's election to retain the Equipment shall be given to the Vendee and the Lessee by telegram or registered mail, and to any other persons to whom the law may require notice, within 30 days after such Declaration of Default. In the event that the Vendor should elect to retain the Equipment and no objection is made thereto within the 30-day period described in the second proviso below, all the Vendee's rights to the Equipment shall thereupon terminate and all payments made by the Vendee or for its account may be retained by the Vendor as compensation for the use of the Equipment; provided, however, that if the Vendee, before the expiration of the 30-day period described in the proviso below, should pay or cause to be paid to the Vendor the total unpaid balance of the CSA Indebtedness, together with interest thereon accrued and unpaid and all other payments due under this Agreement, then in such event absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Vendee; provided further, however, that if the

Vendee, the Lessee or any other persons notified under the terms of this paragraph object in writing to the Vendor within 30 days from the receipt of notice of the Vendor's election to retain the Equipment, then the Vendor may not so retain the Equipment, but shall sell, lease or otherwise dispose of it or continue to hold it pending sale, lease or other disposition as hereinafter provided or as may otherwise be permitted by law. If the Vendor shall not have given notice to retain as hereinabove provided or notice of intention to dispose of the Equipment in any other manner, it shall be deemed to have elected to sell the Equipment in accordance with the provisions of this Article 16.

Subject to the Lessee's rights of possession, use and assignment under §§ 4 and 12 of the Lease, at any time during the continuance of a Declaration of Default, the Vendor, with or without retaking possession thereof, at its election and upon reasonable notice to the Vendee, the Lessee and any other persons to whom the law may require notice of the time and place, may sell the Equipment, or one or more of the units thereof, free from any and all claims of the Vendee, the Lessee or any other party claiming from, through or under the Vendee or the Lessee, at law or in equity, at public or private sale and with or without advertisement as the Vendor may determine; provided, however, that if, prior to such sale and prior to the making of a contract for such sale, the Vendee should tender full payment of the total unpaid balance of the CSA Indebtedness, together with interest thereon accrued and unpaid and all other payments due under this Agreement as well as expenses of the Vendor in retaking possession of, removing, storing, holding and preparing the Equipment for, and otherwise arranging for, the sale and the Vendor's reasonable attorneys' fees, then upon receipt of such payment, expenses and fees by the Vendor, absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Vendee. The proceeds of such sale or other disposition, less the attorneys' fees and any other expenses incurred by the Vendor in retaking possession of, removing, storing, holding, preparing for sale and selling or otherwise disposing of the Equipment shall be credited on the amount due to the Vendor under the provisions of this Agreement.

Any sale hereunder may be held or conducted at New York, New York at such time or times as the Vendor may specify (unless the Vendor shall specify a different place or places, in which case the sale shall be held at such place or places as the Vendor may specify), in one lot and

as an entirety or in separate lots and without the necessity of gathering at the place of sale the property to be sold, and in general in such manner as the Vendor may determine, so long as such sale shall be in a commercially reasonable The Vendor or the Vendee may bid for and become the manner. purchaser of the Equipment, or any unit thereof, so offered The Vendee shall be given written notice of such for sale. sale or the making of a contract for such sale not less than 10 business days prior thereto, by telegram or registered mail. If such sale shall be a private sale, (which shall be deemed to mean only a sale where an advertisement for bids has not been published in a newspaper of general circulation or a sale where fewer than 40 offerees have been solicited in writing to submit bids), it shall be subject to the rights of the Vendee to purchase or provide a purchaser, within 10 days after notice of the proposed sale price, at the same price offered by the intending purchaser or a better price. In the event that the Vendor shall be the purchaser of the Equipment, it shall not be accountable to the Vendee or the Lessee (except to the extent of surplus money received as hereinafter provided in this Article 16), and in payment of the purchase price therefor the Vendor shall be entitled to have credited on account thereof all or any part of sums due to the Vendor hereunder.

Each and every power and remedy hereby specifically given to the Vendor shall be in addition to every other power and remedy hereby specifically given or now or hereafter existing at law or in equity, and may be exercised from time to time and simultaneously and as often and in such order as may be deemed expedient by the Vendor. All such powers and remedies shall be cumulative, and the exercise of one shall not be deemed a waiver of the right to exercise any other or others. No delay or omission of the Vendor in the exercise of any such power or remedy and no renewal or extension of any payments due hereunder shall impair any such power or remedy or shall be construed to be a waiver of any default or an acquiescence therein. extension of time for payment hereunder or other indulgence granted to the Vendee or the Lessee shall not otherwise alter or affect the Vendor's rights or the Vendee's obligations hereunder. The Vendor's acceptance of any payment after it shall have become due shall not be deemed to alter or affect the Vendee's obligations or the Vendor's rights hereunder with respect to any subsequent payments or default therein.

If, after applying all sums of money realized by the Vendor under the remedies herein provided, there shall

remain any amount due to it under the provisions of this Agreement, the Vendee shall pay the amount of such deficiency to the Vendor upon demand, together with interest thereon from the date of such demand to the date of payment at the Overdue Rate and, if the Vendee shall fail to pay such deficiency, the Vendor may bring suit therefor and shall, subject to the limitations of the last paragraph of Article 4 hereof, be entitled to recover a judgment therefor against the Vendee. If, after applying as aforesaid all sums realized by the Vendor, there shall remain a surplus in the possession of the Vendor, such surplus shall be paid to the Vendee.

Subject to the limitations of the last paragraph of Article 4 hereof, the Vendee will pay all reasonable expenses, including attorney's fees, incurred by the Vendor in enforcing its remedies under the terms of this Agreement. In the event that the Vendor shall bring any suit to enforce any of its rights hereunder and shall be entitled to judgment, then in such suit the Vendor may recover reasonable expenses, including reasonable attorneys' fees, and the amount thereof shall be included in such judgment.

The foregoing provisions of this Article 16 are subject in all respects to all mandatory legal requirements at the time in force and applicable thereto.

ARTICLE 17. Applicable State Laws. Any provision of this Agreement prohibited by any applicable law of any jurisdiction shall as to such jurisdiction be ineffective, without modifying the remaining provisions of this Agreement. Where, however, the conflicting provisions of any such applicable law may be waived, they are hereby waived by the Vendee to the full extent permitted by law, it being the intention of the parties hereto that this Agreement shall be deemed to be a conditional sale and enforced as such.

Except as otherwise provided in this Agreement, the Vendee, to the full extent permitted by law, hereby waives all statutory or other legal requirements for any notice of any kind, notice of intention to take possession of or to sell or lease the Equipment, and and other requirements as to the time, place and terms of the sale or lease thereof, any other requirements with respect to the enforcement of the Vendor's rights under this Agreement and any and all rights of redemption.

ARTICLE 18. Filing. The Vendee will cause this Agreement, any assignments hereof and any amendments or

supplements hereto or thereto, to be filed in accordance with 49 U.S.C. § 11303; and the Vendee will from time to time do and perform any other act and will execute, acknowledge, deliver, file, register, deposit and record any and all further instruments required by law or reasonably requested by the Vendor for the purpose of proper protection, to the satisfaction of counsel for the Vendor, of its interest in the Equipment and its rights under this Agreement or for the purpose of carrying out the intention of this Agreement; and the Vendee will promptly furnish to the Vendor certificates or other evidence of such filing, registering, depositing and recording satisfactory to the Vendor.

ARTICLE 19. Article Headings; Effect and Modification of Agreement. All article headings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

Except for the Participation Agreement, this Agreement, including the Annexes hereto, exclusively and completely states the rights of the Vendor and the Vendee with respect to the Equipment and supersedes all other agreements, oral or written, with respect to the Equipment. No variation or modification of this Agreement and no waiver of any of its provisions or conditions shall be valid unless in writing and signed by duly authorized representatives of the Vendor and the Vendee.

ARTICLE 20. Notice. Any notice required or permitted hereunder shall be deemed to have been received by the addressee on the date of actual receipt (if such date is a business day, otherwise on the next business day), if transmitted by mail, telex, telecopy or similar transmission, or by hand, addressed as follows:

- (a) to the Lessee, at 2000 Second Avenue, Detroit, Michigan 48226, Attention of Secretary,
- (b) to the Builder at its address specified in Item 1 of Annex A hereto,
- (c) to the Assignee, at its address at P. O. Box 2258, 2 Hopkins Plaza, Baltimore, Maryland 21203, Attention of Corporate Trust Department,
- (d) to the Vendee at its address set forth on the signature page of the Participation Agreement,

(e) to any assignee of the Vendor or Assignee, or of the Vendee, at such address as may have been furnished in writing to the Vendee, or the Vendor or the Assignee, as the case may be, and to the Lessee, by such assignee.

or at such other address as may have been furnished in writing by such party to the other parties referred to above.

ARTICLE 21. Satisfaction of Undertakings. The obligations of the Vendee under the second paragraph of Article 16 (including the provisions thereof with respect to insurance, maintenance and repair) and under Articles 3, 6, 7 (other than the third and fourth sentences of the second paragraph thereof), 8, 9, 10, 12 (other than the proviso to the last paragraph thereof), 13 and 18 hereof shall be deemed in all respects satisfied by the Lessee's undertakings contained in the Lease. The Vendee shall not have any responsibility for the Lessee's failure to perform such obligations, but if the same shall not be performed they shall constitute the basis for an event of default pursuant to Article 15 (a) or (b) hereof.

ARTICLE 22. Law Governing. The Vendee warrants that its chief place of business is located in the State of New York and agrees to notify all other parties hereto in writing if it proposes to change such chief place of business, such notice to specify the proposed new place. terms of this Agreement and all rights and obligations hereunder shall be governed by the laws of the State of New York; provided, however, that the parties shall be entitled to all rights conferred by 49 U.S.C. § 11303 and such additional rights arising out of the filing or recording hereof, if any, and of any assignment hereof as shall be conferred by the laws of the several jurisdictions in which this Agreement or any assignment hereof shall be filed or recorded. The parties hereto hereby irrevocably consent to the jurisdiction of any federal or state court sitting in the City and State of New York in respect to any claim or dispute arising hereunder.

ARTICLE 23. Execution. This Agreement may be executed in any number of counterparts, such counterparts together constituting but one and the same contract, but the counterpart delivered to the Assignee pursuant to the CSA Agreement shall be deemed the original and all other counterparts shall be deemed duplicates thereof. Although for convenience this Agreement is dated as of the date first

above written, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgements hereto annexed.

ARTICLE 24. Payments to the Vendee. (a) pursuant to the reorganization provisions of the Bankruptcy Reform Act of 1978, as amended, or any successor provision, the Vendee is required, by reason of the Vendee being held to have recourse liability to the debtor directly or indirectly, to make payment on account of any amount payable as principal or interest on the CSA Indebtedness, and (b) any such holder of CSA Indebtedness actually receives any Excess Amount which reflects any payment by the Vendee on account of (a) above, then such holder shall promptly refund to the Vendee such Excess Amount. purposes of this Article 24, "Excess Amount" means the amount by which such payment exceeds the amount which would have been received by such holder if the Vendee had not become subject to the recourse liability referred to in (a) above. It is the intention of the parties hereto that the Vendee shall not have any recourse liability in respect of the CSA Indebtedness.

IN WITNESS WHEREOF, the parties hereto have executed or caused this instrument to be executed all as of the date first above written.

[Corporate Seal] by Title: PRESIDENT

Attest:

Attesting Secretary

ASSISTANT SECRETARY

THE BANK OF NEW YORK,

by

Vice President

STATE OF PENNSYLVANIA,)
) ss.:
COUNTY OF MERCER

On this 17th day of October 1985, before me personally appeared K. Auttle , to me personally known, who, being by me duly sworn, says that he is a PRESIDENT of GREENVILLE STEEL CAR COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, and that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

leora Smith Notary Public

My Commission Expires Gral 3, 1989
LEORA SM(TH, Notary Public

GREENVILLE, MERCER COUNTY My Commission Expires April 3, 1989

[Notarial Seal]

STATE OF NEW YORK,)

COUNTY OF NEW YORK,)

On this day of October 1985, before me personally appeared , to me personally known, who, being by me duly sworn, says that he is a Vice President of THE BANK OF NEW YORK, that said instrument was signed on behalf of said bank by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said bank.

Notary Public

My Commission Expires

[Notarial Seal]

SCHEDULE I
Allocation of each \$1,000,000 of 11.67% CSA Indebtedness

enti di igrani

		•		
Payment Date	Debt Service	Interest	Principal Repayment	Outstanding Balance
7/2/86 1/2/87 7/2/88 7/2/88 7/2/88 1/2/89 7/2/89 1/2/90 7/2/90 1/2/91 7/2/91 1/2/92 7/2/93 7/2/93 1/2/94 7/2/94 1/2/95 7/2/96 1/2/97 7/2/97 1/2/98 7/2/98 1/2/99 7/2/99 1/2/00 7/2/00	\$\frac{\sqrt{\sq}\sqrt{\sqrt{\sqrt{\sqrt{\sqrt{\sqrt{\sqrt{\sqrt{\	58,350.00 58,350.00 56,178.05 56,178.05 56,178.05 53,752.63 51,044.16 51,044.16 48,019.61 48,019.61 45,470.51 45,470.51 45,470.51 45,470.51 45,470.51 43,102.90 40,703.50 40,703.50 40,703.50 36,743.77 36,743.77 36,743.77 33,208.46 33,208.46 29,587.37 29,587.37 29,587.37 29,587.37 29,587.37 29,587.37 29,587.37 25,857.91 19,968.11 19,968.11 11,321.12 11,321.12	Repayment 0.00 0.00 37,222.85 0.00 41,566.76 0.00 46,417.60 0.00 51,834.54 0.00 43,686.41 0.00 40,576.09 0.00 41,120.69 0.00 67,861.77 0.00 60,588.01 0.00 62,058.15 0.00 63,915.32 0.00 100,939.12 0.00 148,191.71 0.00 165,485.68	Balance 1,000,000.00 1,000,000.00 962,777.15 962,777.15 921,210.39 874,792.78 874,792.78 822,958.25 822,958.25 779,271.84 779,271.84 738,695.75 738,695.75 738,695.75 738,695.75 697,575.06 699,125.28 569,125.28 569,125.28 569,125.28 507,067.13 443,151.81 443,151.81 342,212.69 342,212.69 194,020.98 194,020.98 194,020.98 28,535.30
1/2/01 7/2/01 TOTALS	1,665.03 30,200.33 2,109,946.27	1,665.03 1,665.03 1,109,946.27	28,535.30 1,000,000.00	28,535.30 0.00

^{*} Interest only shall be payable to the extent accrued to this date.

SCHEDULE I
Allocation of each \$1,000,000 of 11.67% CSA Indebtedness

\				
Payment	Debt		Principal	Outstanding
Date	Service	Interest	Repayment	Balance
			appropriate -	
7/2/8/6	*	* *	0.00	1,000,000.00
1/2/8入	58,350.00	58 , 350.00	0.00	1,000,000.00
7/2/87	95,572.85	58,350%00	37,222.85	962,777.15
1/2/88	56,178.05	56,1/8.05	0.00	962,777.15
7/2/88	97,744.81	56,178.05	41,566.76	921,210.39
1/2/89	53,752.63	53,752.63	0.00	921,210.39
7/2/89	1,00,170.23	5/3,752.63	46,417.60	874,792.78
1/2/90	51,044.16	/51,044.16	0.00	874,792.78
7/2/90	102,878.69 /	51,044.16	51,834.54	822,958.25
1/2/91	48,019.61	48,019.61	0.00	822,958.25
7/2/91	91,706.02/	48,019.61	43,686.41	779,271.84
1/2/92	45,470.5/1	45,470.51	0.00	779,271.84
7/2/92	86,046,61	45,470.51	40,576.09	738,695.75
1/2/93	43,102,90	43,102.90	0.00	738,695.75
7/2/93	84,228.58	43,102.90	41,120.69	697,575.06
1/2/94	40,703.50	40,703.50	0.00	697,575.06
7/2/94	108,565.27	40,703.50	67,861.77	629,713.30
1/2/95	36/743.77	36,743.77	0.00	629,713.30
7/2/95	97/,331.78	36,743.77	60,588.01	569,125.28
1/2/96	3/3,208.46	33,208.46	0.00	569,125.28
7/2/96	\$5,266.61	33,208.46	62,058.15	507,067.13
1/2/97	/29,587.37	29,587.37	0.00	507,067.13
7/2/97	93,502.69	29,587.37	63,915.32	443,151.81
1/2/98	25,857.91	25,857.91	0.00	443,151.81
7/2/98	126,797.02	25,857,91	100,939.12	342,212.69
1/2/99 /	19,968.11	19,968.11	0.00	342,212.69
7/2/99	168,159.82	19,968.1	148,191.71	194,020.98
1/2/00/	11,321.12	11,321.12	0.00	194,020.98
7/2/00	176,806.81	11,321.12	165,485.68	28,535.30
1/2/01	1,665.03	1,665.03	0.00	28,535.30
7/2/01	30,200.33	1,665.03	28,535.30	0.00
. , , , , , , ,	30,200.33	1,000.00	40,333.30	0.00
TOTALS	2,109,946.27 1,	109,946.27	1,000,000.00	

 $^{\ \ ^{\}star}$ Interest only shall be payable to the extent accrued to this date.

- Item 1: Greenville Steel Car Company, a Pennsylvania corporation with an address at Union Street, Greenville, Pennsylvania 16125, attention of Vice President-Finance.
- Item 2: The Equipment shall be settled for in such number of Groups of units delivered to and accepted by the Vendee as shall be agreed to by the parties hereto.
- Item 3: The Builder warrants that the Equipment will be built in accordance with the requirements, specifications and standards set forth in Article 2 of the CSA to which this Annex A is attached (the "Agreement") and warrants the Equipment will be free from defects in material (except as to specialties incorporated therein which were specified or supplied by the Lessee and not manufactured by the Builder) and workmanship and design (except as to designs specified by the Lessee and not developed by the Builder) under normal use and service, the Builder's obligations under this Item 3 being limited to making good at its plant any part or parts of any unit of the Equipment which shall, within two years or 50,000 miles, whichever first occurs, after delivery of such unit of Equipment to the Lessee, be returned to the Builder with transportation charges prepaid and which the Builder's examination shall disclose to its satisfaction to have been thus In no event shall the Builder be defective. liable to anyone for any incidental, special or consequential damages. The foregoing warranty of the Builder is expressly in lieu of all other warranties, express or implied, including any implied warranty of merchantability or fitness for a particular purpose, except for its obligations or liabilities under Articles 2, 3, 4 and 13 of the Agreement, and the Builder neither assumes nor authorizes any person to assume for it any other liability in connection with the construction and delivery of the Equipment, except as aforesaid.

The Builder further agrees with the Vendee and the Lessee that neither the inspection as provided in Article 3 of this Agreement nor the acceptance of any units of the Equipment as provided in said

Article 3 shall be deemed a waiver or a modification by the Vendee and the Lessee of any of their rights under this Item 3.

Item 4: The Builder agrees to indemnify, protect and hold harmless the Vendee and the Lessee from and against any and all liability, claims, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Vendee, its assigns or the Lessee because of the use in or about the construction or operation of any of the Equipment of any design, system, process, formula, combination, article or material which infringes or is claimed to infringe on any patent or other right. Lessee, as a condition to its being a third party beneficiary hereof, likewise will indemnify, protect and hold harmless the Builder from and against any and all liability, claims, demands, costs, charges and expenses, including royalty payments and reasonable attorney's fees, in any manner imposed upon or accruing against the Builder because of the use in or about the construction or operation of the Equipment, or any unit thereof, of any design, process or combination specified by the Lessee and not developed or purported to be developed by such Builder, or article or material specified by the Lessee, which infringes or is claimed to infringe on any patent or other right. The Builder agrees to and hereby does, to the extent legally possible without impairing any claim, right or cause of action hereinafter referred to, assign, set over and deliver to the Vendee every claim, right and cause of action which the Builder has or hereafter shall have against the seller or sellers of any designs, systems, processes, formulae, combinations, articles or materials specified by the Lessee and purchased or otherwise acquired by the Builder for use in or about the construction or operation of any of the Equipment, on the ground that any such design, system, process, formula, combination, article or material or operation thereof infringes or is claimed to infringe on any patent or other right and the Builder further agrees to execute and deliver to the Vendee all and every such further assurances as may be reasonably requested by the Vendee more fully to effectuate the assign-

ment, transfer and delivery of every such claim,

right and cause of action. The Lessee, as a condition to its being a third party beneficiary hereof, will give notice to the Builder of any claim known to the Lessee on the basis of which liability may be charged against the Builder hereunder and the Builder will give notice to the Lessee and the Vendee of any claim known to the Builder, on the basis of which liability may be charged against the Lessee or the Vendee hereunder. Such covenants of indemnity shall continue in full force and effect notwithstanding the full payment of all sums due under this Agreement, the satisfaction and discharge of this Agreement or the termination of this Agreement in any manner.

- Item 5: The Maximum Purchase Price referred to in Article 4 of the Agreement is \$24,300,000.
- Item 6: The Maximum CSA Indebtedness referred to in Article 4 of the Agreement is \$13,400,000.

Annex B to Conditional Sale Agreement

Estimated Time and Place of Delivery	Oct-Dec, 1985, at Builder's Plant.
Total Base <u>Price</u>	\$38,651.88 \$23,577,646.80
Unit Base Price	\$38,651.88
Lessee's Identification Numbers (Both Inclusive)	DEEX 8101- 8710
Quantity	610
Builder's Plant	Greenville, Pennsylvania
Type	108 Ton, 4,320 cu. ft. Aluminum bodied-steel underframed, rotary dump, gondola rail cars
Builder	Greenville Steel Car Company

[CS&M Ref. 1696-046]

LEASE OF RAILROAD EQUIPMENT

Dated as of October 1, 1985

between

THE DETROIT EDISON COMPANY, Lessee

and

THE BANK OF NEW YORK, Lessor

[Covering 610 Greenville Rotary Dump Gondola Cars]

The rights and interests of the Lessor under this Lease are subject to a security interest in favor of Mercantile-Safe Deposit and Trust Company, as agent for a certain investor. The original of this Lease is held by said Agent.

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^{*} This Table of Contents has been included in this document for convenience only and does not form a part or affect any construction or interpretation of this document.

LEASE OF RAILROAD EQUIPMENT dated as of October 1, 1985, between THE DETROIT EDISON COMPANY, a Michigan corporation (the "Lessee"), and THE BANK OF NEW YORK, a New York corporation (the "Lessor").

WHEREAS the Lessor is entering into a Conditional Sale Agreement dated as of the date hereof (the "CSA") with Greenville Steel Car Company (the "Builder"), pursuant to such the Builder has agreed to manufacture, conditionally sell and deliver to the Lessor the units of railroad equipment described in Schedule A hereto (the "Equipment");

WHEREAS the Builder under an Agreement and Assignment dated as of the date hereof (the "CSA Assignment") is assigning its interests in the CSA to Mercantile-Safe Deposit and Trust Company acting as Agent (hereinafter, together with its successors and assigns and the Investor, as hereinafter defined, called the "Vendor") under a Participation Agreement dated as of the date hereof (the "Participation Agreement") with the Lessee, the Lessor and the Investor named therein (said investor, together with its successors and assigns, being hereinafter called the "Investor");

WHEREAS the Lessee desires to lease such number of units of Equipment as are delivered and accepted and settled for under the CSA (the "Units") at the rentals and for the terms and upon the conditions hereinafter provided; and

WHEREAS the parties contemplate that the Lessor will assign for security purposes certain of its rights in this Lease to the Vendor by an Assignment of Lease and Agreement dated as of the date hereof (the "Lease Assignment"), and the Lessee will consent thereto by a Consent and Agreement (the "Consent");

NOW, THEREFORE, in consideration of the premises and of the rentals to be paid and the covenants hereinafter mentioned to be kept and performed by the Lessee, the Lessor hereby leases the Units to the Lessee upon the following terms and conditions:

§ 1. NET LEASE

This Lease is a net lease and the Lessee shall not be entitled to any abatement of rent or additional rent or any other amounts payable by it hereunder (all such rent, additional rent and other amounts are referred to collectively in this § 1 as "Rent"), or setoff against or recoupment or reduction of Rent, including, but not limited to, abatements, setoffs, reductions or recoupments due or alleged to be due by reason of any past, present or future claims or counterclaims of the Lessee against the Lessor under this Lease or the CSA or otherwise, or against the builder or the Vendor or any other person or for any other reason whatsoever. The Lessee's obligations hereunder, including its obligations to pay all Rent, shall be absolute and unconditional under any and all circumstances, and except as otherwise expressly provided herein, this Lease shall not terminate, nor shall the respective obligations of the Lessor or the Lessee be otherwise affected, by reason of any defect in or damage to or loss of possession or loss of use or destruction of all or any of the Units from whatsoever cause, any liens, encumbrances or rights of others with respect to any of the Units, the prohibition of or other restriction against the Lessee's use of all or any of the Units, the interference with such use by any person, the invalidity or unenforceability or lack of due authorization of this Lease, any insolvency of or any bankruptcy, reorganization or similar proceeding against the Lessee, or for any other cause whether similar or dissimilar to the foregoing, any present or future law to the contrary notwithstanding, it being the intention of the parties hereto that all Rent payable by the Lessee hereunder shall continue to be payable in all events in the manner and at the times herein provided unless the obligation to pay the same shall be terminated pursuant to the express provisions of this Lease. To the extent permitted by applicable law, the Lessee hereby waives any and all rights which it may now have or which at any time hereafter may be conferred upon it, by statute or otherwise, to terminate, cancel, quit or surrender the lease of any of the Units except in accordance with the express terms hereof. Each payment of Rent made by the Lessee hereunder shall be final and the Lessee shall not seek to recover all or any part of such payment from the Lessor for any reason whatsoever except manifest error.

§ 2. DELIVERY AND ACCEPTANCE OF UNITS

The Lessor hereby appoints the Lessee its agent for inspection and acceptance of the Units pursuant to the The Lessor will cause each Unit to be delivered to the Lessee at the point or points within the United States of America at which such Unit is delivered to the Lessor under the CSA. Upon such delivery, the Lessee will cause an employee of the Lessee to inspect the same and, if such Unit is found to be acceptable, to accept delivery of such Unit, and the Lessee shall execute and deliver to the Lessor a certificate of acceptance ("Certificate of Acceptance") substantially in the form annexed hereto as Schedule D, whereupon, except as provided in the next sentence hereof, such Unit shall be deemed to have been delivered to and accepted by the Lessee and shall be subject thereafter to all the terms and conditions of this Lease. The delivery, inspection and acceptance hereunder of any unit of Equipment excluded from the CSA pursuant to the first paragraph of Article 4 thereof shall be null and void and ineffective to subject such unit to this Lease or to constitute acceptance thereof on behalf of the Lessor for any purpose whatsoever.

§ 3. RENTALS

- The Lessee agrees to pay the Lessor, as rental for each Unit subject to this Lease, 32 consecutive payments, payable in arrears, commencing January 2, 1987, to and including July 2, 2002. The 32 rental payments shall each be in an amount equal to the basic lease rate set forth in Schedule B hereto for the applicable payment date multiplied by the Purchase Price (as defined in Article 4 of the CSA) of each Unit subject to this Lease. In addition, if the Vendee shall fail to pay to the Agent on July 2, 1986, an amount equal to interest accrued to said date on the CSA Indebtedness as required by the first sentence of Paragraph 10 of the Participation Agreement, the Lessee shall on July 2, 1986, pay to the Agent an amount equal to said accrued interest, in which event the Lessee shall have a right to sue the Vendee for the amount so paid to the Agent plus interest thereon at the Prime Rate (as defined in § 16 hereof) plus 1% per annum until repaid or withhold an amount equal to the same plus such interest thereon from rentals hereunder but only to the extent such withholdings are not required to satisfy the obligations of the Vendee under the CSA.
- (2) The basic lease rates set forth in Schedule B hereto and the related Casualty Values and Termination

Values set forth in Schedule C hereto have been calculated on the assumptions that the Units will have been delivered and settled for by the Lessor and the Agent on the dates and in the amounts as follows:

Number of Units	Assumed Delivery Date	Assumed Settlement Date	Assumed Settlement Amount
200	October 1985	10/30/85	\$7,760,000
205	November 1985	11/30/85	7,954,000
205	December 1985	12/30/85 .	7,954,000
			\$23,668,000

If for any reason such assumptions are not correct, then such basic lease rates and such Casualty values and Termination Values payable by the Lessee hereunder in respect of the Units on and after January 2, 1987, shall be increased or decreased, as the case may be, by such amount as shall, in the reasonable opinion of the Lessor, cause the Lessor's nominal after-tax yield and net after-tax cash flows as were originally anticipated by the Lessor in evaluating this transaction (such yield and cash flow being hereinafter called "Net Economic Return") to be the same as if such assumptions had been correct. The Lessor shall provide a schedule of such rentals and Casualty Values to the Lessee and the Agent promptly after the facts have been determined and the calculations have been made by the Lessor. Lessee so requests, such calculations will, at the expense of the Lessee, be verified by the Lessor's independent auditors and the determination of such auditors shall be binding on the parties hereto.

Notwithstanding anything to the contrary set forth herein, the rentals and Casualty Value and Termination percentages, as adjusted pursuant to this § 3, shall always be sufficient to satisfy the obligations of the Lessor under the CSA regardless of any limitation of liability set forth therein and the date on which rental is payable shall in any event be consistent with the Lessor's payment obligations under the CSA.

If any of the rental payment dates referred to above is not a business day the rental payment otherwise payable on such date shall be payable on the next preceding business day. The term "business day" as used herein means a calendar day, excluding Saturdays, Sundays and any other day on which banking institutions in New York City, New York, Detroit, Michigan, or Baltimore, Maryland, are authorized or obligated to remain closed.

The Lessor irrevocably instructs the Lessee to make all the payments provided for in this Lease, including, but not limited to, the payments provided for in this § 3 and in § 7 hereof, but excluding all Excluded Payments as defined in the Lease Assignment, at the principal office of the Vendor, for the account of the Lessor in care of the Vendor, with instructions to the Vendor, first, to apply such payments to satisfy the obligations of the Lessor under the CSA, and, second, so long as no event of default under the CSA shall have occurred and be continuing, to pay any balance promptly to the Lessor at such place as the Lessor shall specify in writing. If the Lease Assignment is not executed and delivered, or if the Lessee shall have been advised by the Agent in writing that all sums due from the Vendee under the CSA have been fully discharged and satisfied, payments thereafter due shall be made to the The Lessee agrees to make each payment provided for Lessor. herein as contemplated by this paragraph by wire transfer of immediately available funds to the Vendor or the Lessor, as the case may be, by 11:00 a.m., New York City time, on the date such payment is due.

§ 4. TERM OF LEASE

- 4.1. Beginning and Termination. The term of this Lease as to each Unit shall begin on the date of delivery and acceptance of such Unit hereunder and, subject to the provisions of §§ 7, 10 and 13 hereof, shall terminate on the date on which the final payment of rent in respect thereof is due pursuant to § 3.1 hereof. The obligations of the Lessee hereunder (including, but not limited to, the obligations under §§ 3, 6, 7, 9 and 14 hereof) shall survive the expiration or termination of the term of this Lease.
- 4.2. Rights and Obligations of Lessee Subject to CSA. Notwithstanding anything to the contrary contained herein, all rights and obligations of the Lessee under this Lease and in and to the Units are subject to the rights of the Vendor under the CSA. If an event of default should occur under the CSA, the Vendor may terminate this Lease (or rescind its termination), all as provided therein; provided, however, that, so long as (i) no Event of Default exists hereunder, (ii) the Lessee is complying with the provisions of the Consent and (iii) the Vendor is entitled to apply the Payments (as defined in the Lease Assignment) in accordance with the Lease Assignment, this Lease may not be terminated and the Lessee shall be entitled to the rights of possession, use and assignment provided under § 12 hereof.

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§ 5. IDENTIFICATION MARKS

- Identifying Numbers; Legend, Changes. Lessee will cause each Unit to be kept numbered with the identification number set forth in Schedule A hereto, and will keep and maintain, plainly, distinctly, permanently and conspicuously marked on each side of each Unit, in letters not less than one inch in height, the words "OWNERSHIP SUBJECT TO A SECURITY AGREEMENT FILED WITH THE INTERSTATE COMMERCE COMMISSION", with appropriate changes thereof as from time to time may be required by law, in the opinion of the Vendor and the Lessor, in order to protect the Lessor's and the Vendor's title to and interest in such Unit and the rights of the Lessor under this Lease and the rights of the Vendor under the CSA. The Lessee will not place any such Unit in operation or exercise any control or dominion over the same until such words shall have been so marked and will replace promptly any such markings which may be removed, obliterated, defaced or destroyed. The Lessee will not change the identification number of any Unit unless and until (i) a statement of new number or numbers to be substituted therefor shall have been filed with the Vendor and the Lessor and duly filed and deposited by the Lessee in all public offices where this Lease and the CSA shall have been filed and deposited and (ii) the Lessee shall have furnished the Vendor and the Lessor an opinion of counsel to the effect that such statement has been so filed and deposited, that such filing and deposit will protect the Vendor's and the Lessor's rights in such Units and that no other filing, deposit or giving of notice with or to any Federal, state or local government or agency thereof is necessary to protect the rights of the Vendor and the Lessor in such Units.
- § 5.1, the Lessee will not allow the name of any person, association or corporation to be placed on any Unit as a designation that might be interpreted as a claim of ownership; provided, however, that the Units may be lettered with the names or initials or other insignia customarily used by the Lessee or its affiliates.

§ 6. TAXES

The Lessee assumes responsibility for, and agrees to pay, hold harmless and indemnify on an after-tax basis the Lessor, the Investor and the Vendor and their servants, agents, employees, officers, directors, successors and assigns (the "Indemnified Persons") against, all taxes,

fees, assessments, withholdings, levies, imposts, duties, license and registration fees and other governmental charges of any nature whatsoever, including without limitation penalties, additions to tax and interest (all such taxes, fees, assessments, withholdings, levies, imposts, duties, license and registration fees, other governmental charges, penalties, additions to tax and interest being hereinafter called "Taxes"), imposed on, incurred by or asserted against any Indemnified Person or the Units or any thereof on account of, or with respect to or in any way relating to or arising out of, this Lease or the CSA or any document referred to herein or therein or any of the transactions contemplated hereby or thereby or the manufacture, purchase, acquisition, acceptance or rejection of the Units or any thereof or the ownership, delivery, non-delivery, leasing, subleasing, transfer of title, use, operation, maintenance, repair, condition, sale, return, abandonment or other application or disposition of the Units or any thereof or any indebtedness with respect thereto or the rentals, receipts, earnings or gains arising therefrom; provided, however, that there shall be no indemnification hereunder for (i) any Taxes imposed on or measured by any fees or compensation received by the institution who is the Vendor, (ii) Federal income taxes and income or franchise taxes imposed on the Investor or its successors and assigns with respect to interest paid on the CSA Indebtedness, (iii) Federal income taxes and income or franchise taxes imposed on the Lessor or its successors or assigns by the State of its incorporation or, if different, by the state in which its principal office is located or any taxing authority or jurisdiction therein or by any other taxing jurisdiction not related to: (w) the execution, delivery and performance of this Lease, the Participation Agreement or the CSA or any document referred to herein or hereof or any of the transactions contemplated hereby or thereby or (x) the manufacture, purchase, acquisition, acceptance, or rejection of the Units or any thereof, or (y) the ownership, delivery, non-delivery, leasing, subleasing, transfer of title, use, operation, maintenance, repair, condition, sale, return, abandonment or other application or disposition of the Units or any thereof or any indebtedness with respect thereto, or (z) the rentals, receipts, earnings or gains arising therefrom, and (iv) Taxes payable by the Lessor as a result of any transfer of any of its interest in the Equipment unless such transfer is made during the continuance of an Event of Default hereunder. The Lessee shall pay all Taxes for which it assumes liability hereunder when such Taxes are due and will indemnify each Indemnified Person to the extent required by this § 6 within thirty (30) days after receipt of a written demand for indemnification

from the Indemnified Person specifying the amount to be paid, the basis on which such amount was determined and the nature of the Taxes in question.

In the event that the Lessor shall become obligated to make any payment to the Builder or the Vendor or otherwise pursuant to any corresponding provision of the CSA (other than the proviso to the third paragraph of Article 12 thereof) not covered by the foregoing paragraph of this § 6, the Lessee shall pay such additional amounts (which shall also be deemed Taxes hereunder) to the Lessor as will enable the Lessor to fulfill completely its obligations pursuant to said provision.

In the event any returns, statements or reports with respect to Taxes are required to be made, the Lessee will make such returns, statements and reports in such manner as to show the interest of the Lessor and the Vendor in the Units; provided, however, that the Lessor shall, with respect to any State or political subdivision thereof of the United States of America, file such returns, statements, and reports relating to sales or use taxes, and taxes, fees, and charges on or measured by the Lessor's earnings or gross receipts arising from the Units, or the value added by the Lessor thereto, as the Lessee shall determine are required to be filed, and as shall be prepared by the Lessee, and the Lessor shall remit the amount thereof upon payment by the Lessee to the Lessor (such payment to be made forthwith upon demand by the Lessor therefor) of such taxes, fees and charges except as provided above. To the extent that the Lessor has information necessary to the preparation of such returns, statements and reports, it will furnish such information to the Lessee.

To the extent that the Lessee may be prohibited by law from performing in its own name the duties required by this § 6, the Lessor hereby authorized the Lessee to act in its own name and on its behalf; provided, however, that the Lessee shall indemnify and hold the Lessor harmless from and against any and all claims, costs, expenses, damages, losses and liabilities incurred in connection therewith as a result of, or incident to, any action by the Lessee pursuant to this authorization.

The Lessee shall, whenever reasonably requested by the Lessor, submit to the Lessor copies of returns, statements, reports, billings and remittances, or furnish other evidence satisfactory to the Lessor, of the Lessee's performance of its duties under this § 6. The Lessee shall also

furnish promptly upon request such data as the Lessor reasonably may require to permit the Lessor's compliance with the requirements of taxing jurisdictions.

The Lessee agrees to pay all amounts due under this § 6 free of any Taxes and to indemnify each Indemnified Person against any Taxes imposed by reason of any payment made by the Lessee so that the Indemnified Person to whom or for whose benefit the payment is made shall receive an amount which, net of any Taxes or other charges required to be paid by such Indemnified Person in respect thereof (calculated at the maximum statutory rates then in effect), shall be equal to the amount of payment otherwise required hereunder. Without limiting the foregoing, the amount which the Lessee shall be required to pay with respect to any Taxes subject to indemnification under this § 6 shall be an amount sufficient so that, after considering the tax and other effects of the Taxes in question and the receipt of indemnification payments hereunder, the Indemnified Person will have the same Net Economic Return had such Taxes not been incurred or imposed.

In the event that, during the continuance of this Lease, the Lessee becomes liable for the payment or reimbursement of any Taxes pursuant to this § 6, such liability shall continue, notwithstanding the expiration of this Lease, until all such Taxes are paid or reimbursed by the Lessee.

If any claim is made against any Indemnified Person or if any proceeding is commenced against any Indemnified Person for any Taxes as to which the Lessee has an indemnity obligation pursuant to this § 6, such Indemnified Person shall promptly notify the Lessee, but the failure to provide such notice shall not affect the Lessee's obligations hereunder to any Indemnified Person except that the Lessee shall not be obligated to indemnify such Indemnified Person for any additional Taxes or penalties or interest thereon to the extent resulting solely from such failure. If reasonably requested by the Lessee in writing, upon determination by such Indemnified Person (which determination shall be reasonable) that the action to be taken will not result in any substantial risk or consequences materially adverse to it and that the action to be taken will not result in any material danger of sale, forfeiture or loss of, or the creation of any liens (except if the Lessee shall have adequately bonded such lien or otherwise made provision to protect the interests of such Indemnified Person in respect of such lien in a manner satisfactory to such Indemnified Person) on the Units or any thereof, such Indemnified Person shall upon receipt of indemnity satisfactory to it and at the expense of the

Lessee (including, without limitation, all costs, expenses, attorneys' and accountants fees and disbursements, penalties and interest) in good faith contest the validity, applicability or amount of such Taxes by, in such Indemnified Person's sole discretion, (A) resisting payment thereof, (B) not paying the same except under protest, if protest is necessary and proper, or (C) if payment is made, using reasonable efforts to obtain a refund thereof in appropriate administrative and judicial proceedings. Indemnified Person shall not be required to take any action pursuant to this paragraph unless and until the Lessee shall have agreed to indemnify such Indemnified Person in a manner reasonably satisfactory to such Indemnified person for any liability or loss which such Indemnified Person may reasonably incur as a result of such contest and shall have agreed to pay such Indemnified Person on demand all costs and expenses which such Indemnified Person may reasonably incur in connection with such contest (including fees and disbursements of counsel). Any contest required pursuant to the preceding sentence shall, at the option of such Indemnified Person, be conducted by such Indemnified Person or the Lessee in the name of the Lessee or such Indemnified Person. With respect to property taxes, sales and use taxes, and other similar taxes levied or imposed directly on the Equipment or the use or value thereof (other than income or franchise taxes on or based on income), at the request of the Lessee, the Indemnified Person will permit the Lessee to conduct the contest so long as the contested liability is the only contested liability of the Indemnified Person then pending or threatened before the respective taxing authorities. In the case of any contest conducted by the Lessee the Indemnified Person will take or join in any action reasonably requested by the Lessee with respect thereto. If any such contest involves payment of the Tax in question, the Lessee shall either make such payment directly to the appropriate authority or furnish to such Indemnified Person sufficient funds to make The Lessee agrees to give such Indemnified such payment. Person reasonable notice of any contest prior to the date by which it must be commenced. | If any Indemnified Person obtains a refund of all or any part of any Tax paid or reimbursed by the Lessee and if no Event of Default or event with which the giving of notice and/or passage of time would become an Event of Default shall have occurred and be continuing, such Indemnified Person shall promptly pay to the Lessee the amount of such refund net of expenses not already paid or reimbursed by the Lessee; provided, however, that the aggregate amount of all payments with respect to any Taxes made by the Indemnified Person to the Lessee pursuant to this sentence shall not exceed the aggregate amount of all payments made by the Lessee to such Indemnified Person pursuant to this § 6 with respect to such

addition to such refund such Indemnitee shall receive an amount representing interest on the amount of such refund, the Lessee shall promptly be paid that portion of such interest that is fairly attributable to Taxes paid or reimbursed by the Lessee prior to the receipt of such refund. Nothing contained herein shall require any Indemnified Person to contest or permit the Lessee to contest a claim which it would otherwise be required to contest if such Indemnified Person shall waive payment by the Lessee of any amount that might otherwise be payable by the Lessee under this § 6 by way of indemnity in respect of such claim or if an Event of Default shall have occurred and be continuing hereunder.

§ 7. MAINTENANCE, CASUALTY OCCURRENCE, INSURANCE, ECONOMIC OBSOLESCENCE

- Maintenance. The Lessee at its own expense will maintain, service, repair and/or overhaul, as necessary, each Unit (including any parts installed on or replacements made to any Unit which are considered an accession thereto pursuant to § 9.3) so that each Unit will remain (a) in good operating condition (ordinary wear and tear excepted) for its intended purpose, (b) in compliance with any and all applicable laws and regulations and all mandatory safety bulletins issued by the Builder applicable to the Equipment, (c) meet the standards then in effect under the interchange rules of the American Association of Railroads and (d) in compliance with the Lessee's insurance policies and not in violation of any of the Builder's The Lessee shall not discriminate between the warranties. Equipment and such other similar equipment to the detriment of the Equipment in its maintenance procedures and practices.
- Unit shall be or become worn out, lost, stolen, destroyed or, in the good faith and reasonable opinion of the Lessee, irreparably damaged, or remains in an inoperable condition for six (6) consecutive months (excluding any period during which the Lessee is unable to repair same or make same operable due to labor strikes or other work stoppages, lockouts, or events beyond the reasonable control of the Lessee) from any cause whatsoever, or permanently returned to the Builder pursuant to any patent indemnity provision of the CSA prior to the return of such Unit in the manner set forth in § 14 hereof, or should title to any Unit be taken or requisitioned by condemnation or otherwise by any governmental authority, or should use of any Unit be taken or requisitioned by any governmental authority for a period

exceeding six (6) consecutive months (such occurrences being hereinafter called "Casualty Occurrences"), the Lessee shall promptly (but in any event within 30 days after such Casualty Occurrence) and fully notify the Lessor and the Vendor with respect thereto. On the date set forth in Schedule C hereto next succeeding such notice (each such date being herein called a "Casualty Payment Date") the Lessee shall pay to the Lessor an amount equal to the rental payment or payments in respect of such Unit then due and payable plus a sum equal to the Casualty Value (as defined in § 7.4 hereof) of such Unit as of such rental payment date. Upon the making of such payment by the Lessee in respect of any Unit, the rental for such Unit shall cease to accrue, the term of this Lease as to such Unit shall terminate and (except in the case of the loss, theft, complete destruction or permanent return to the Builder of such Unit) the Lessor shall be entitled to recover possession of such Unit.

Whenever any Unit shall suffer a Casualty Occurrence after termination of this Lease at the expiration of the original or extended term hereof and before such Unit shall have been returned in the manner provided in § 14 hereof, the Lessee shall promptly and fully notify the Lessor with respect thereto and pay to the Lessor (in addition to any amounts due pursuant to § 14 hereof) an amount equal to the Casualty Value as of the end of such original or extended term of this Lease, as the case may be.

- Lessee Agent for Disposal. The Lessor hereby appoints the Lessee its agent to dispose of any Unit suffering a Casualty Occurrence or any component thereof, at the best price obtainable on an "as is, where is" basis. Provided that the Lessee has previously paid the Casualty Value to the Lessor and provided no Event of Default (or other event which after notice or lapse of time or both would become an Event of Default) shall have occurred and be continuing, the Lessee shall be entitled to the net proceeds of such sale to the extent they do not exceed the Casualty Value of such Unit, and shall pay any excess to the Lessor. The Lessee shall be entitled to credit against the Casualty Value payable in respect of any Unit permanently returned to the Builder pursuant to any patent indemnity provision of the CSA an amount equal to any net patent indemnity payment in respect of such Unit made by the Builder to the Vendor under the CSA. The Lessee will pay all costs and expenses in connection with the sale of any Unit pursuant to a Casualty Occurrence.
 - 7.4. <u>Casualty Value</u>. During the original term of this Lease, the Casualty Value of each Unit as of any Casualty Payment Date shall an amount equal to the

percentage of the Purchase Price of such Unit as is set forth in Schedule C hereto opposite such Casualty Payment Date. During any renewal term hereof the Casualty Value of each Unit as of any Casualty Payment Date shall be an amount equal to the Fair Market Value of such Unit at the beginning of such renewal term.

Requisition. In the event of the requisition (except after such requisition has become a Casualty Occurrence) of use by any governmental authority (hereinafter collectively called the "Government") of any Unit during the term of this Lease or any renewal thereof, all of the Lessee's obligations (including without limitation the obligation to pay rent) under this Lease with respect to such Unit shall continue to the same extent as if such requisition had not occurred, except that if such Unit is returned by the Government at any time after the end of the term of this Lease or any renewal thereof, the Lessee shall be obligated to return such Unit to the Lessor pursuant to § 11 or 14 hereof, as the case may be, promptly upon such return by the Government rather than at the end of the term of this lease or any renewal thereof, but the Lessee shall in all other respects comply with the provisions of said § 11 or 14, as the case may be, with respect to such Unit. All payments received by the Lessor or the Lessee from the Government for the use of such Unit during the term of this Lease or any renewal thereof and prior to such use having become a Casualty Occurrence shall, to the extent such payments are equal to or less than the rent payable by the Lessee hereunder in respect of such Unit, be paid over to, or retained by, the Lessee, provided no Event of Default (or other event which after notice or lapse of time or both would become an Event of Default) shall have occurred and be continuing, and all payments in excess thereof shall be paid over, or retained by, the All payments received by the Lessor or the Lessee from the Government for the use of such Unit after such use shall have become a Casualty Occurrence, shall be paid over to, or retained by, the Lessee, up to an amount equal to the Casualty Value actually paid by the Lessee in respect thereof, and all such payments in excess thereof shall be paid over to, or retained by, the Lessor. All payments received by the Lessor or the Lessee for the use of such Unit after the original term of this Lease or any renewal thereof shall be paid over to, or retained by, the Lessor.

Except as hereinabove provided in this § 7, the Lessee shall not be released from its obligation hereunder in the event of, and shall bear the risk of, any Casualty Occurrence to any Unit from and after delivery and acceptance thereof by the Lessee hereunder.

The Lessee will, at all times 7.6. Insurance. prior to the return of the Units to the Lessor, at its own expense, cause to be carried and maintained with insurance carriers reasonably satisfactory to the Lessor and the Vendor physical damage insurance and public liability insurance in respect of the Units at the time subject hereto, against such reasonable risks, in such reasonable amounts and on such reasonable terms and conditions as are satisfactory to the Lessor and the Vendor, and, in any event, not less comprehensive in amounts and against risks customarily insured against by the Lessee in respect of similar equipment owned or leased by it, but in no event shall such coverage be for amounts or against risks less than the prudent public utility industry standards for such leased equipment, nor shall the amount of physical damage insurance for any Unit be less than the Casualty Value payable from time to time for such Unit. All policies with respect to such insurance shall name the Lessor and the Vendor as additional insureds or loss payees, as their interests may appear, shall provide for at least 30 days' prior written notice by the insurance carrier to the Lessor and the Vendor in the event of cancellation, expiration or amendment, shall include waivers by the insurer of all claims for premiums against the Lessor and the Vendor, shall provide that losses are payable notwithstanding, among other things, any act, omission or neglect of the Lessee, the Lessor or the Vendor (except for the sole negligence of the Lessor or the Vendor), any breach or violation by the Lessee, the Lessor or the Vendor of any warranty, declaration, condition or other provision contained in any such policy, or foreclosure, notice of sale or any other proceeding in respect of the Units (except for the sole negligence of the Lessor or the Vendor), or any change in the title to or ownership of any of the Units and shall contain provisions whereby the insurance carrier waives all rights of subrogation which it may have against any named insured therein or loss payee thereunder. Each such insurance policy shall expressly provide that all of the provisions thereof except the limits of liability (which shall be applicable to all insureds as a group) and liability for premiums (which shall be solely a liability of the Lessee) shall operate in the same manner as if they were a separate policy covering each insured and shall be primary without right of contribution from any insurance carried by the Lessor or the Vendor. The Lessee shall furnish to the Lessor and the Vendor a certificate of an independent insurance broker reasonably acceptable to Lessor evidencing the maintenance of the insurance required hereunder and

shall furnish certificates evidencing renewal 15 days prior to the expiration date of such policy or policies. Notwithstanding anything to the contrary contained herein, the Lessee agrees that it will not, without the prior written consent of the Lessor, reduce the amount of the physical damage insurance required to be maintained hereby or public liability insurance required to be maintained hereby below the dollar limits set forth in an officer's certificate provided by the Lessee at the First Delivery Date Closing, or reduce the risks covered by such insurance below those insured against as of the First Delivery Date, or retain self-insurance in excess of \$1,000,000 in respect of such physical damage insurance or \$2,500,000 in respect of such public insurance.

In the event of the failure of the Lessee to provide and furnish any of the aforesaid insurance, the Lessor or the Agent, upon notice to the Lessee, may, but shall not be obligated to, procure such insurance and the Lessee shall, upon demand, reimburse the Lessor and the Agent for all expenditures made by the Lessor or the Agent for such insurance, together with interest thereon computed at the rate set forth in § 16 in respect of overdue rentals from the date of the Agent's or the Lessor's payment until reimbursed by the Lessee.

- Insurance Proceeds and Condemnation Payments. If the Lessor shall receive any insurance proceeds or condemnation payments or any payments from the American Association of Railroads in respect of a Unit suffering a Casualty Occurrence, the Lessor shall, subject to the Lessee's having made payment of the Casualty Value in respect of such Unit and provided no Event of Default (or other event which after notice or lapse of time or both would become an Event of Default) shall have occurred and be continuing, pay such proceeds or payments to the Lessee up to an amount equal to the Casualty Value with respect to a Unit paid by the Lessee and any balance of such proceeds or payments shall remain the property of the Lessor. If the Lessor shall receive any insurance proceeds in respect of any Unit not suffering a Casualty Occurrence, all such proceeds shall be paid to the Lessee upon proof to the Lessor that any damage to such Unit in respect of which such proceeds were paid has been fully repaired so as to comply with the provisions of § 7.1 hereof, provided no Event of Default (or other event which after notice or lapse of time or both would become an Event of Default) shall have occurred and be continuing.
- 7.8. Economic Obsolescence. In the event that the Lessee shall during the original term hereof, in its

reasonable judgment, determine that the Units remaining under this Lease have become economically obsolete or surplus to the Lessee's requirements in the Lessee's business, as determined in good faith by the Vice President of Operations of the Lessee, the Lessee shall have the right, at its option and on at least 180 days' prior written notice to the Lessor and the Vendor, to terminate (which act shall hereinafter be called the "Termination") this Lease as to all or not less than 244 of such Units as of any succeeding January 2 or July 2 specified in such notice (such termination date so specified being hereinafter called the "Termination Date"); provided, however, that (i) the Termination Date shall not be earlier than January 2, 1996, (ii) no Event of Default or other event which after the lapse of time or the giving of notice or both would become an Event of Default shall have occurred and be continuing on such date or on the date on which the notice of such Termination shall be given, (iii) on the Termination Date all Units shall be in the condition required for redelivery pursuant to § 14 hereof and (iv) such right of Termination shall be available only once.

During the period after the giving of such notice until the fifth business day preceding the Termination Date, the Lessee shall use its best efforts to obtain bids (and the Lessor may at its option obtain additional bids) for the purchase of each such Unit, and the Lessee shall at least five business days prior to such Termination Date certify to the Lessor the amount of each such bid and the name and address of the party (which shall not be a corporation, other entity or individual affiliated with the Lessee or any other party from whom the Lessee or any such affiliate intends thereafter to lease such Unit) submitting such bid. On the Termination Date, the Lessor shall sell each such Unit for cash to the bidder who shall have submitted the highest bid prior to the Termination Date. The total sale price realized at each such sale shall be retained by the Lessor.

On such Termination Date, the Lessee shall pay to the Lessor with respect to the Units an amount equal to the sum of (i) the amount, if any, by which the Termination Value (as hereinafter defined) for the Units computed as of such date exceeds the sale price of the Units so sold after the deduction of all expenses incurred by the Lessor in connection with such sale plus (ii) the rental payment with respect to the Units due on such Termination Date plus (iii) an amount equal to the premium payable under Article 7 of the CSA in respect of the prepayment of the principal of

the CSA Indebtedness resulting from such Termination. The Termination Value of each such Unit as of the Termination Date shall be the percentage of Purchase Price of such Unit set forth in Schedule C hereto opposite such date. In no event shall the aggregate amount of sale proceeds retained by the Lessor and payments of rental and Termination Value received by the Lessor as aforesaid be less than the Termination Value (as defined in the CSA) with respect to the Units as of such Termination Date.

Except as is provided in the last paragraph of this § 7.8, if no sale of all the Units shall occur on the Termination Date with respect thereto as provided above, no Termination shall occur with respect to any of the Units and this Lease shall continue in full force and effect without change.

Upon the receipt by the Lessor of the amounts above described, the obligation of the Lessee to pay rent pursuant to § 3 hereof in respect of such Units on each rental payment date shall continue to and including the Termination Date but shall then terminate. The Lessor shall be under no duty to solicit bids, to inquire into the efforts of the Lessee to obtain bids or otherwise to take any action or incur any cost or expense in connection with any sale other than to transfer or to cause to be transferred all the Lessor's right, title and interest in and to such Unit to the purchaser named in the highest bid certified by the Lessee to the Lessor as above provided. Any such sale shall be free and clear of all the Lessee's rights to such Unit, but otherwise shall be made without recourse or warranties other than against Lessor's Liens as defined in § 13.3.

If the Lessee shall exercise its option to effect a Termination, the Lessor may, notwithstanding such election by the Lessee, by written notice to the Lessee given within 90 days after the termination notice is given to the Lessor and upon satisfaction and discharge of the Lessor's obligations under the CSA with respect to the Units, elect to retain such Units, in which case the Lessee shall not be obligated to pay the Termination Value to the Lessor. In the event the Lessor shall so elect to retain such Units and delivers to the Lessee evidence of the satisfaction and discharge of the Lessor's obligations under the CSA with respect to the Units, the Lessee shall deliver such Units to the Lessor in accordance with the provisions of § 14 hereof.

§ 8. REPORTS

On or before April 30 in each year, commencing with the calendar year 1986, the Lessee will furnish to the Lessor and the Vendor a certificate signed by the Vice President-Operations of the Lessee or another qualified person satisfactory to the Lessor and the Vendor (a) setting forth as of the preceding December 31 the amount, description and numbers of all Units then leased hereunder and covered by the CSA, the amount, description and numbers of all Units that have suffered a Casualty Occurrence during the preceding calendar year and such other information regarding the condition and state of repair of any Units as the Lessor or the Vendor may reasonably request, (b) stating that, in the case of all Units repainted or repaired during the period covered by such statement, the numbers and markings required by § 5 hereof have been preserved or replaced, (c) further stating that the Lessee is in compliance under the Lease and has performed or has caused to be performed the required maintenance of the Unit and that no event has occurred which with the lapse of time or notice or both would constitute an Event of Default or, if such an event has occurred, the nature and status thereof. The Lessor and the Vendor shall each have the right by its agents to inspect the Units and the Lessee's records with respect thereto at such reasonable times as the Lessor or the Vendor may request during the continuance of this Lease. The Lessee shall promptly notify the Lessor and the Vendor of any occurrence of an Event of Default or other event which after notice or lapse of time or both would become an Event of Default, specifying such Event of Default and all such events and the nature and status thereof.

- § 9. DISCLAIMER OF WARRANTIES, COMPLIANCE WITH APPLICABLE LAWS, ADDITIONS, MODIFICATIONS AND IMPROVEMENTS, INDEMNIFICATION
- 9.1. Disclaimer of Warranties. THE LESSOR DOES NOT MAKE, HAS NOT MADE AND SHALL NOT BE DEEMED TO MAKE OR HAVE MADE ANY WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE DESIGN OR CONDITION OF, OR AS TO THE QUALITY OF THE MATERIAL, EQUIPMENT OR WORKMANSHIP IN, THE UNITS DELIVERED TO THE LESSEE HEREUNDER, AND THE LESSOR DOES NOT MAKE ANY WARRANTY OF MERCHANTABILITY OR FITNESS OF THE UNITS FOR ANY PARTICULAR PURPOSE OR AS TO TITLE TO THE UNITS OR ANY COMPONENT THEREOF, OR AS TO THE LESSEE'S RIGHT TO QUIET ENJOYMENT THEREOF OR ANY OTHER REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO ANY UNIT,

EITHER UPON DELIVERY THEREOF TO THE LESSEE OR OTHERWISE, it being agreed that all such risks, as among the Lessor and the Lessee, are to be borned by the Lessee; but the Lessor hereby irrevocably appoints and constitutes the Lessee its agent and attorney-in-fact during the term of this Lease to assert and enforce from time to time, in the name of and for the account of the Lessor and/or the Lessee, as their interests may appear, at the Lessee's sole cost and expense, whatever claims and rights the Lessor may have against the Builder under the provisions of Items 3 and 4 of Annex A to the CSA; provided, however, that if at any time an Event of Default shall have occurred and be continuing, the Lessor may assert and enforce, at the Lessee's sole cost and expense, such claims and rights. The Lessor shall not have any responsibility or liability to the Lessee or any other person with respect to any of the following: (i) any liability, loss or damage caused or alleged to be caused directly or indirectly by any Units or by any inadequacy thereof or deficiency or defect therein or by any other circumstances in connection therewith; (ii) the use, operation or performance of any Units or any risks relating thereto; (iii) any interruption of service, loss of business or anticipated profits or consequential damages; or (iv) the delivery, operation, subleasing, servicing, maintenance, repair, improvement or replacement of any Units. The Lessee acknowledges and agrees that each Unit upon acceptance will be of a size, design, capacity and manufacture selected by the Lessee and that the Lessee is satisfied that the same is suitable for its purpose. The Lessee's delivery of a Certificate of Acceptance shall be conclusive evidence as between the Lessee and the Lessor that the Units described therein are in all the foregoing respects satisfactory to the Lessee, and the Lessee will not assert any claim of any nature whatsoever against the Lessor based on any of the foregoing matters.

9.2. Compliance with Applicable Laws. The Lessee agrees, for the benefit of the Lessor and the Vendor, at all times to comply in all respects (including, without limitation, with respect to the use, maintenance and operation of each Unit) with all applicable laws of the jurisdictions in which its operations involving the Units may extend, with the interchange rules of the Association of American Railroads, if applicable, and with all lawful rules of the United States Department of Transportation, the Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Units, to the extent that such laws and rules affect the title, operation or use of the Units

(all such laws and rules to such extent called "Applicable Law"), and in the event that, prior to the expiration of this Lease or any renewal thereof, Laws require any alteration, replacement, addition or modification of or to any part on any Unit, the Lessee will conform therewith at its own expense; provided, however, that the Lessee may at its own expense, in good faith, contest the validity or application of any Law in any reasonable manner which does not, in the opinion of the Lessor or the Vendor, adversely affect the property or rights of the Lessor or the Vendor under this Lease or under the CSA.

- Additions, Modifications and Improvements. The Lessee, at its own cost and expense, may from time to time make such other additions, modifications and improvements to the Units during the term of this Lease as are readily removable without causing material damage to the Units (and do not adversely affect the value of the Units). The additions, modifications and improvements made by the Lessee under the preceding sentence shall be owned by the Lessee (or such other party as may have title thereto), except to the extent such additions, modifications or improvements are described in the following sentence. and all parts installed on and additions and replacements made to any Unit (i) which are not readily removable without causing material damage to such Unit and were installed or were added to such Unit in contravention of the provisions contained hereinabove, (ii) the cost of which is included in the Purchase Price of such Unit, (iii) in the course of ordinary maintenance of the Units or (iv) which are required for the operation or use of such Unit by the interchange rules of the Association of American Railroads or by the regulations of the Interstate Commerce Commission, the United States Department of Transportation or any other regulatory body, shall constitute accessions to such Unit and full ownership thereof free from any lien, charge, security interest or encumbrance (except for those created by the CSA) shall immediately be vested in the Lessor.
- 9.4. Indemnification. The Lessee shall pay, and shall protect, indemnify and hold each Indemnified Person harmless from and against any and all causes of action, suits, penalties, claims, demands or judgments, of any nature whatsoever which may be imposed on, incurred by or asserted against any Indemnified Person (including any or all liabilities, obligations, damages, reasonable costs, reasonable disbursements, reasonable expenses [including without limitation attorneys' fees and expenses of any Indemnified Person] relating thereto) in any way relating to

or arising or alleged to arise out of this Lease or the Units, including without limitation, those in any way relating to or arising or alleged to arise out of (i) the manufacture, construction, purchase, acceptance, rejection, ownership, delivery, nondelivery, lease, possession, use, operation, condition, sale, storage, return or other disposition of any Unit or portion thereof; (ii) any latent or other defects whether or not discoverable by any Indemnified Person or the Lessee; (iii) any claim for patent, trademark or copyright infringement; (iv) any claims based on strict liability in tort; (v) any injury to or the death of any person or any damage to or loss of property on or near the Units or in any manner growing out of or concerned with, or alleged to grow out of or be connected with, the ownership, use, replacement, adaptation or maintenance of the Units or of any other equipment in connection with the Units (whether owned or under the control of the Lessor, the Lessee or any other person) or resulting or alleged to result from the condition of any thereof; (vi) any violation, or alleged violation, of any provision of this Lease or of any agreement, law, rule, regulation, ordinance or restriction, affecting or applicable to the Units or the leasing, ownership, use, replacement, adaptation or maintenance thereof; or (vii) any claim arising out of any of the Lessor's or the Vendor's obligations under the Lease Assignment, the CSA or the Participation Agreement, except to the extent such claim arises from the gross negligence or wilful misconduct of the person otherwise to be indemnified hereunder (all such matters called "Indemnified Matters"). The Lessee shall be obligated under this § 9.4, irrespective of whether any Indemnified Person shall also be indemnified with respect to the same Indemnified Matter under any other agreement by any other person, and the Indemnified Person seeking to enforce the indemnification may proceed directly against the Lessee under this § 9.4 without first resorting to any such other rights of indemnification. In case any action, suits or proceeding is brought against any Indemnified Person, in connection with any Indemnified Matter, the Lessee may and, upon such Indemnified Person's request, will at the Lessee's expense resist and defend such action, suit or proceeding, or cause the same to be resisted or defended by counsel selected by the Lessee and approved by such Indemnified Person, as the case may be, and, in the event of any failure by the Lessee to so do, the Lessee shall pay all reasonable costs and expenses (including without limitation attorneys' fees and expenses) incurred by such Indemnified Person in connection with such action, suit or proceeding. event the Lessee is required to make any payment under this

§ 9.4, the Lessee shall pay such Indemnified Person an amount which, after deduction of all taxes required to be paid by such Indemnified Person in respect of the receipt thereof under the laws of the United States or of any political subdivision thereof (after giving credit for any savings in respect of any such taxes by reason of deductions, credits or allowances in respect of the payment of the expense indemnified against, and of any other such taxes as determined in the sole discretion of the Indemnified Person), shall be equal to the amount of such payment. Lessee and each Indemnified Person agree to give each other promptly upon obtaining knowledge thereof written notice of any claim or liability hereby indemnified against; provided, however, that any failure of any Indemnified Person to furnish such notice in a prompt manner shall not relieve the Lessee from its obligation to indemnify pursuant to this Upon the payment in full of any indemnities as § 9.4. contained in this § 9.4 by the Lessee, and provided that no Event of Default (or other event which with lapse of time or notice or both would constitute an Event of Default) shall have occurred and be continuing, it shall be subrogated to any right of such Indemnified Person in respect of the matter against which indemnity has been paid as aforesaid. Any payments received by such Indemnified Person from any person (except the Lessee) as a result of any matter with respect to which such Indemnified Person has been indemnified by the Lessee pursuant to this § 9.4 shall be paid over to the Lessee to the extent necessary to reimburse the Lessee for indemnification payments previously made in respect of such matter. Nothing herein contained shall constitute a guaranty by the Lessee of the CSA Indebtedness under the CSA or a quaranty of the residual value of any Unit.

The Lessee further agrees to indemnify, protect and hold harmless each Indemnified Person from and against any and all liabilities, claims, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against such Indemnified Person because of the use in or about the construction or operation of any of the Units of any article or material specified by the Lessee and not manufactured by the Builder or of any design, system, process, formula or combination specified by the Lessee and not developed or purported to be developed by the Builder which infringes or is claimed to infringe on any patent or other right.

The Lessee shall bear the responsibility and risk for, and shall not be released from its obligations here-

under in the event of, any damage to or the destruction or loss of any or all of the Units of Equipment.

The Lessee agrees to prepare and deliver to the Lessor within a reasonable time prior to the required filing date (or, to the extent permissible, file on behalf of the Lessor) any and all reports (other than tax returns) to be filed by the Lessor with any Federal, state or other regulatory authority by reason of the ownership by the Lessor or the Vendor of the Units, or the leasing thereof to the Lessee.

The indemnities contained in this § 9.4 shall survive the expiration or termination of this Lease with respect to all events, facts, conditions or other circumstances occurring or existing prior to such expiration or termination and are expressly made for the benefit of and shall be enforceable and collectible directly from the Lessee by any Indemnified Person notwithstanding the provisions of the Lease Assignment or the Consent. None of the indemnities in this § 9.4 shall be deemed to create any rights of subrogation in any insurer or third party against the Lessee therefor, from or under any Indemnified Person, whether because of any claim paid or defense provided for the benefit thereof or otherwise.

§ 10. DEFAULT

- 10.1. Events of Default, Remedies. If, during the continuance of this Lease one or more of the following events (each such event being herein sometimes called an "Event of Default") shall occur:
 - (A) default shall be made in payment of any amount provided for in § 3, 6, 7, 9, 13 or 16 hereof, and such default shall continue for five business days;
 - (B) the Lessee shall make or permit any unauthorized assignment or transfer of this Lease, or any interest herein, or of the right to possession of the Units, or any thereof;
 - (C) default shall be made in observance or performance of any other of the covenants, conditions and agreements on the part of the Lessee contained herein or in the Consent or in the Participation Agreement and such default shall continue for 30 days after the earlier of (i) written notice from the Lessor or the

Vendor to the Lessee specifying the default and demanding that the same be remedied and (ii) the date on which such default shall first become known to any officer of the Lessee;

- (D) any representation or warranty made by the Lessee herein or in the Consent or in the Participation Agreement or in any agreement, document or certificate delivered by the Lessee in connection herewith or therewith (other than the Indemnity Agreement) shall prove to have been incorrect in any material respect when made or given;
- a petition for reorganization under Title 11 of the United States Code, as now constituted or as hereafter amended, shall be filed by or against the Lessee and, unless such petition shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Lessee under this Lease, the Consent and the Indemnity Agreement shall not have been and shall not continue to be duly assumed in writing within 60 days after such petition shall have been filed, pursuant to a court order or decree, by a trustee or trustees appointed (whether or not subject to ratification) in such proceedings in such manner that such obligations shall have the same status as expenses of administration and obligations incurred by such trustee or trustees; or
- any other proceeding shall be commenced by or against the Lessee for any relief which includes or might result in any modi fication of the obligations of the Lessee under this Lease, the Consent and the Indemnity Agreement under any bankruptcy or insolvency laws or laws relating to the relief of debtors, readjustments of indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit any readjustments of such obliqations), and, unless such proceedings shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all such obligations shall not have been and shall not continue to be duly assumed in writing within 60 days after such proceedings shall have been commenced, pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed

(whether or not subject to ratification) for the Lessee or for the property of the Lessee in connection with any such proceedings in such manner that such obligations shall have the same status as expenses of administration and obligations incurred by such trustee or trustees or receiver or receivers;

then, in any such case, the Lessor, at its option, may:

- (a) proceed by appropriate court action or actions, either at law or in equity, to enforce performance by the Lessee of the applicable covenants of this Lease or to recover damages for the breach thereof; or
- by notice in writing to the Lessee terminate this Lease, whereupon all rights of the Lessee to the use of the Units shall absolutely cease and terminate as though this Lease had never been made, but the Lessee shall remain liable as herein provided; and thereupon the Lessor may by its agents enter upon the premises of the Lessee or other premises, insofar as the Lessee may be lawfully authorized to so permit, where any of the Units may be located, without judicial process if this can be done without breach of the peace and in accordance with due process of law, and take possession of all or any of such Units and thenceforth hold, possess, sell, operate, lease and enjoy the same free from any right of the Lessee, or its successors or assigns, to use the Units for any purposes whatever and without any duty to account to the Lessee for such action or inaction or for any proceeds arising therefrom; but the Lessor shall, nevertheless, have a right to recover from the Lessee any and all amounts which under the terms of this Lease may be then due or which may have accrued to the date of such termination (computing the rental for any number of days less than a full rental period by multiplying the rental for such full rental period by a fraction of which the numerator is such number of days and the denominator is the total number of days in such full rental period) and also to recover forthwith from the Lessee as damages for loss of the bargain and not as a penalty whichever of the following amounts that the Lessor, in its sole discretion, shall specify, (i) a sum, with respect to each Unit, which represents (w) the excess of the present value, at the time of such termination, of the entire unpaid balance of all rental for such Unit which would otherwise have accrued hereunder from the date of such termination to the end of the term as to such Units

such present value to be computed on the basis of 10% per annum discount, compounded semiannually from the respective dates upon which rental would have been payable hereunder had this Lease not been terminated over the then present value of the rental which the Lessor reasonably estimates to be obtainable for each Unit during such period, such present value to be the respective dates upon which rentals would have been payable hereunder had this Lease not been terminated) or, if such Unit is sold, the net proceeds of the sale plus (x) any damages and expenses, including reasonable attorneys' fees, in addition thereto which the Lessor shall have sustained by reason of the breach of any covenant, representation or warranty of this Lease other than for the payment of rental or (ii) the sum of (y) an amount equal to the excess, if any, of the Casualty Value as of the Casualty Payment Date on or next preceding date of termination over the amount the Lessor reasonably estimates to be fair market sales value of such Unit at such time plus (z) any amounts described in clause (x) above; provided, however, that in the event the Lessor shall have sold any Unit, the Lessor, in lieu of collecting any amounts payable by the Lessee pursuant to the preceding clause (ii) (y) with respect to such Unit, may demand that the Lessee pay to the Lessor and the Lessee shall pay to the Lessor on the date of such sale, as liquidated damages for loss of a bargain and not as a penalty, an amount equal to the excess, if any, of the Casualty Value for such Unit as of the Casualty Payment Date on or next preceding the date of termination over the net proceeds of such sale.

In addition, the Lessee shall be liable, except as otherwise provided above, for any and all unpaid amounts due hereunder before, during or after the exercise of any of the foregoing remedies and for all reasonable attorneys' fees and other costs and expenses incurred by reason of the occurrence of any Event of Default or the exercise of the Lessor's remedies with respect thereto, including all costs and expenses incurred in connection with the return of any Unit.

10.2. Remedies Not Exclusive, Waiver. The remedies in this Lease provided in favor of the Lessor shall not be deemed exclusive, but shall be cumulative and may be exercised concurrently or consecutively, and shall be in addition to all other remedies in its favor existing at law or in equity. The Lessee hereby waives any mandatory re-

quirements of law, now or hereafter in effect, which might limit or modify the remedies herein provided, to the extent that such waiver is not, at the time in question, prohibited by law. The Lessee hereby waives any and all existing or future claims to any offset against the rental payments due hereunder, and agrees to make such payments regardless of any offset or claim which may be asserted by the Lessee or on its behalf. The Lessee hereby waives any and all claims against the Lessor and the Vendor and their agent or agents for damages of whatever nature in connection with any retaking of any Unit pursuant to this § 10.2.

10.3. Failure to Exercise Rights is not Waiver. No failure by the Lessor to exercise, and no delay by the Lessor in exercising, any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or privilege by the Lessor preclude any other or further exercise thereof, or the exercise of any other right, power or privilege.

§ 11. RETURN OF UNITS UPON DEFAULT

If this Lease shall 11.1. Return of Units. terminate pursuant to § 10 hereof, the Lessee shall forthwith deliver possession of the Units to the Lessor. Unit so delivered shall be in the condition required by § 7.1 hereof and shall have attached or affixed thereto any special device considered an accession thereto as provided in § 9 and shall have removed therefrom at the Lessee's expense any addition, modification or improvement which, as provided in § 9, is owned by the Lessee. For the purpose of delivering possession, the Lessee shall at its own cost, expense and (a) forthwith and in the usual manner (including but not by way of limitation, giving prompt telegraphic and written notice to the Association of American Railroads and all railroads to which any Units have been interchanged or which may have possession thereof to return such Unit so interchanged) cause such Units to be placed upon such storage tracks at such site or sites as the Lessor reasonably may designate; and (b) permit the Lessor to store such Units on such tracks at the risk of the Lessee without charge for insurance, rent or storage until all such Units have been sold, leased or otherwise disposed of by the Lessor.

The assembling, delivery, storage, insurance and transporting of the Units as hereinbefore provided shall be at the expense and risk of the Lessee and are of the essence

of this Lease and, upon application to any court of equity having jurisdiction, the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee so to assemble, deliver and During any storage period, the Lessee store the Units. will, at its own expense, maintain and keep the Equipment in the condition required by § 7.1 hereof and will permit the Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser, lessee or user of any such Unit, to inspect the same. All amounts earned in respect of the Units after the date of termination of this Lease shall belong to the Lessor and, if received by the Lessee, shall be held in trust for the benefit of the Lessor and promptly turned over to the Lessor. In the event any Unit is not assembled, delivered and stored, as hereinabove provided, within 30 days after such termination, the Lessee shall, in addition, pay to the Lessor for each day thereafter an amount equal to the amount, if any, by which 0.052894% of the Purchase Price for such Unit for each such day exceeds the actual earnings received by the Lessor with respect to such Unit for each such day.

11.2. Lessor Appointed Agent of Lessee. Without in any way limiting the foregoing obligations of the Lessee under this § 11, the Lessee hereby irrevocably appoints the Lessor as the agent and attorney of the Lessee, with full power and authority, at any time while the Lessee is in default hereunder and is obligated to deliver possession of any Unit to the Lessor, to demand and take possession of such Unit in the name and on behalf of the Lessee from whomsoever shall be in possession of such Unit at the time.

§ 12. ASSIGNMENT, POSSESSION AND USE

- assignable in whole or in part by the Lessor without the consent of the Lessee, but the Lessee shall be under no obligation to any assignee of the Lessor except upon written notice of such assignment from the Lessor. The Lessee hereby consents to the assignment of this Lease pursuant to the Lease Assignment. All the rights of the Lessor hereunder shall inure to the benefit of the Lessor's successors and assigns.
 - 12.2 <u>Lessee's Rights to Use the Units; To Permit</u>
 Use Thereof by Others and to Sublease the Units. So long as
 (i) no Event of Default exists hereunder, (ii) the Lessee is

complying with the provisions of the Consent and (iii) the Vendor is entitled to apply the Payments (as defined in the Lease Assignment) in accordance with the Lease Assignment, the Lessee shall be entitled to the possession and use of the Units in accordance with the terms of this Lease. Lessee shall not assign or transfer its leasehold interest under this Lease in the Units or any of them without the prior written consent of the Lessor and the Vendor, except as provided in this § 12.2; and the Lessee shall not part with possession or control of, or suffer or allow to pass out of its possession or control, any of the Units without the prior written consent of the Lessor and the Vendor, except as provided in this § 12.2. Without the prior written consent of the Lessor and the Vendor, the Lessee may sublease (which sublease shall be expressly subject and subordinate to the rights and remedies of the Lessor and the Vendor hereunder and under the CSA) the Units to, or permit their use by, any person controlling, controlled by, or under common control with the Lessee or a user incorporated in the United States of America (or any State thereof or the District of Columbia) upon lines of a railroad company or companies incorporated in the United States of America (or any State thereof or the District of Columbia) or over which the Lessee, such user, or such railroad company or companies have trackage rights or rights for operation of their trains and upon the lines of railroad of connecting and other carriers in the usual interchange of traffic or in through or run-through service, but only upon and subject to all the terms and conditions of this Lease; provided, however, that the Vendor's and the Lessor's prior written consent, not to be unreasonably withheld, must be obtained for any sublease (other than to an entity controlling, controlled by, or under common control with, the Lessee) that is for a term longer than one year or is renewable for a term more than one year; provided further, however, that the Lessee shall not sublease or permit the sublease or use of any Unit to service involving operation or maintenance outside the United States of America or use or permit the use of any Unit for purposes other than the transport of coal without the consent of the Lessor; and provided further, however, that any such sublease or use shall be consistent with the provisions of the Indemnity Agreement and not result in any The Lessee adverse income tax consequences to the Lessor. may not assign any of its rights or obligations hereunder to any person, firm or entity without the Vendor's and the Lessor's prior written consent except to a person, firm or entity acquiring substantially all of the Lessee's assets or merging or consolidating with the Lessee, provided that the net worth of the person, firm or entity incorporated in the

United States of America (or in any state thereof or the District of Columbia) and acquiring such assets or surviving such merger or consolidation is at least equal to the net worth of the Lessee immediately prior to such acquisition, merger or consolidation and provided further, that no Event of Default hereunder shall exist immediately after completion of such acquisition, merger or consolidation. No such assignment or sublease shall relieve the Lessee of its obligations hereunder which shall be and remain those of a principal and not a surety. The Lessee shall not use, or permit any other person to use, the Equipment in a manner inconsistent with the purposes for which it was designed.

12.3. Discharge of Liens. The Lessee, at its own expense, will promptly pay or discharge any and all sums claimed by any party which, if unpaid, might become a lien, charge, security interest or other encumbrance (other than Lessor Liens and other than encumbrances created by the Vendor or resulting from claims against the Vendor not related to the ownership of the Units) upon or with respect to any Unit or the interest of the Lessor, the Vendor or the Lessee therein, and will promptly discharge any such lien, claim, security interest or other encumbrance which arises.

§ 13. RENEWAL OPTIONS, PURCHASE OPTION

- 13.1. Renewal Options. Provided that this Lease has not been earlier terminated and no Event of Default or event which with lapse of time and/or demand provided for herein could constitute an Event of Default shall have occurred and be continuing, the Lessee may by written notice delivered to the Lessor not less than 180 days prior to the end of the original term or any extended term of this Lease, as the case may be, elect to extend the term of this Lease in respect of all or not fewer than 244 of the Units then covered by this Lease, for an additional one-year period commencing on the scheduled expiration of the original term or extended term of this Lease, as the case may be, at a Fair Market Rental (as defined below) payable in semiannual payments in arrears during such extended term; provided, however, that no option to extend the term of this Lease may be exercised by the Lessee under this § 13.1 more than seven times.
- 13.2. Purchase Option. Provided that this Lease has not been earlier terminated and no Event of Default or event which with lapse of time and/or demand provided for herein could constitute an Event of Default shall have

occurred and be continuing, at the end of the original or any extended term of this Lease the Lessee may by written notice delivered to the Lessor not less than 180 days prior to the end of such term of this Lease, elect to purchase all or not fewer than 244 of the Units then covered by this Lease for the then "Fair Market Purchase Price" thereof.

Fair Market Rental and Fair Market Purchase Fair Market Rental and Fair Market Purchase Price shall be determined on the basis of, and shall be equal in amount to, the cash rental for a one-year period or the purchase price, as the case may be, which would obtain in an arm's-length transaction between an informed and willing lessee or purchaser and an informed and willing lessor or seller, as the case may be, under no compulsion to lease or sell and, in such determination, costs of removal from the location of current use shall not be a deduction from such rental or purchase price and it shall be assumed that all of the Units for which such determination is being made have been collected in one place and have been maintained in full compliance with all of the provisions of § 7.1 hereof. after 10 days from the giving of notice by the Lessee of the Lessee's election to extend the term of this Lease or to exercise its purchase option, the Lessor and the Lessee are unable to agree upon a determination of the Fair Market Rental or Fair Market Purchase Price of the Units, such rental or purchase price shall be determined in accordance with the foregoing definition by the following procedure: If either party to such determination shall have given written notice to the other requesting determination of such rental or purchase price by this appraisal procedure, the parties shall consult for the purpose of appointing a qualified independent appraiser by mutual agreement. such appraiser is so appointed within 5 days after such notice is given, each party shall appoint an independent appraiser within 10 days after such notice is given, and the two appraisers so appointed shall within 20 days after such notice is given appoint a third independent appraiser. no such third appraiser is appointed within 20 days after such notice is given, either party may request the American Arbitration Association to make such appointment, and both parties shall be bound by any appointment so made. appraiser or appraisers appointed pursuant to the foregoing procedure shall be instructed to determine the Fair Market Rental (and, in the case of each renewal period, the Fair Market Purchase Price at the beginning of such renewal period) of the Units subject to the proposed extended term, or the Fair Market Purchase Price, as the case may be, within 30 days after his or their appointment. If the

parties shall have appointed a single appraiser or if either party shall have failed to appoint an appraiser, the determination of Fair Market Rental or Fair Market Purchase Price, as the case may be, of the single appraiser appointed shall be final. If three appraisers shall be appointed, the determination of the appraiser which differs most from that of the other two appraisers shall be excluded, the remaining two determinations shall be averaged and such latter average shall be final and binding upon the parties hereto as the Fair Market Rental or Fair Market Purchase Price, as the case may be. The appraisal proceedings shall be conducted in accordance with the Commercial Arbitration Rules of the American Arbitration Association as in effect on the date hereof, except as modified hereby. The provision for this appraisal procedure shall be the exclusive means of determining Fair Market Rental or Fair Market Purchase Price, as the case may be, and shall be in lieu of any judicial or other procedure for the determination thereof, and each party hereto hereby consents and agrees not to assert any judicial or other procedures. The Lessee shall bear all appraisal procedure expenses.

Upon payment of the purchase price of any Unit, pursuant to an election by the Lessee to purchase the Units, the Lessor shall upon request of the Lessee execute and deliver to the Lessee, or to the Lessee's assignee or nominee, a bill of sale (without representations or warranties) for such Unit such as will transfer to the Lessee such title to such Unit as the Lessor derived from the Vendor, free and clear of Liens" shall mean all liens, security interests and encumbrances created by or arising through the Lessor, and not related to the transactions contemplated hereby or by the Participation Agreement, other than liens, security interests and encumbrances which the Lessee is obligated to pay or discharge under or pursuant to this Lease or Participation Agreement.

§ 14. RETURN OF UNITS UPON EXPIRATION OF TERM

As soon as practicable on or after the expiration of the original or any extended term of this Lease with respect to any Unit or on or after a Termination of this Lease pursuant to § 7.9 hereof, the Lessee will, at its own cost and expense, at the request of the Lessor, deliver possession of such Unit to the Lessor upon such storage tracks at such site or sites (not exceeding three sites) within a 750-mile radius of Superior, Wisconsin, or Decker,

Montana, as the Lessor may designate, or, in the absence of such designation, as the Lessee may select, and permit the Lessor to store such Unit on such tracks for a period not exceeding 180 days following notification to the Lessor by the Lessee that all the Units have been so assembled and delivered for storage, all as directed by the Lessor, the ·movement and storage of such Units to be at the expense and risk of the Lessee (including the insurance required by § 7.8 hereof); and in the event that any Unit shall suffer a Casualty Occurrence during such storage period, the Lessee shall pay the Lessor the Casualty Value thereof as provided in § 7.4 hereof. During any such storage period the Lessee will permit the Lessor or any person designated by it, including the authorized representatives of any prospective purchaser, lessee or user of such Unit, to inspect the same; provided, however, that the Lessee shall not be liable, except in the case of negligence or strict liability of the Lessee or of its employees or agents, for any injury to, or the death of, any person exercising, on behalf of either the Lessor any prospective purchaser, lessee or user, such rights of inspection. Each Unit returned to the Lessor pursuant to this § 14 shall be in the condition required by the maintenance provisions of § 7 hereof and shall have attached or affixed thereto any special device considered an accession thereto as provided in § 9 and shall have removed therefrom at the Lessee's expense any addition, modification or improvement which, as provided in § 9, is owned by the Lessee. The assembling, delivery, storage and transporting of the Units as hereinbefore provided are of the essence of this Lease, and, upon application to any court of equity having jurisdiction in the premises, the Lessor shall be entitled to a decree against the Lessee requiring specific performance thereof. During any storage period, the Lessee will, at its own expense, maintain and keep the Units in the condition in which Lessee normally maintains similar equipment while in a similar storage state and will permit the Lessor or any person designated by it, including the authorized representatives of any prospective purchaser, lessee or user of any such Unit, to inspect the same. the event any Unit is not assembled, delivered and stored, as hereinabove provided, within 30 days after such termination, the Lessee shall pay to the Lessor for each day from the date of such termination during which such Unit is being used by or with the consent of the Lessee an amount equal to the amount, if any, by which .026447% of the Purchase Price of such Unit for each such day exceeds the actual earnings received by the Lessor with respect to such Unit for each such day.

§ 15. RECORDING

The Lessee, at its own expense, will cause this Lease, the CSA and any assignment hereof or thereof to be filed in accordance with 49 U.S.C. § 11303 The Lessee will undertake the filing, registering, deposit, and recording required of the Lessor under the CSA and will from time to time do and perform any other act and will execute, acknowledge, deliver, file, register, record (and will refile, reregister, deposit and redeposit or rerecord whenever required) any and all further instruments required by law or reasonably requested by the Lessor or the Vendor for the purpose of proper protection, to their satisfaction, of the Vendor's and the Lessor's respective rights in the Units, or for the purpose of carrying out the intention of this Lease, the CSA and the assignments thereof to the Vendor; and the Lessee will promptly furnish to the Vendor and the Lessor evidence of all such filing, registering, depositing, recording and other acts which may be required under this § 15, and an opinion or opinions of counsel for the Lessee with respect thereto satisfactory to the Vendor and the Lessor. This Lease and the CSA, and the assignments thereof, shall be filed with the Interstate Commerce Commission prior to the delivery and acceptance hereunder of any Unit.

§ 16. INTEREST ON OVERDUE RENTALS

Anything to the contrary herein contained notwithstanding, any nonpayment of rentals and other obligations due hereunder shall result in the obligation on the part of the Lessee promptly to pay, to the extent legally enforceable, an amount on the overdue rentals and other obligations for the period of time during which they are overdue at a rate per annum equal to 12.67% in the case of amounts assigned and payable to the Agent and at the Prime Rate plus 1% in the case of amounts payable to the Vendee, or such lesser amount as may be legally enforceable. Interest shall be determined on the basis of a 360-day year for the actual number of days elapsed. For the purposes hereof, the "Prime Rate" shall mean the prime commercial lending rate of The Bank of New York as publicly announced to be in effect from time to time.

§ 17. NOTICES

Any notice required or permitted hereunder shall be deemed to have been received by the addressee on the date of actual receipt (if such date is a business day, otherwise on the next business day), if transmitted by mail, telex, telecopy or similar transmission, or by hand, addressed as follows:

- (a) if to the Lessor, at 48 Wall Street, New York, N.Y. 10015, Attention of Equipment Leasing Group; and
- (b) if to the Lessee, at 2000 Second Avenue, Detroit, Michigan 48226, Attention of Secretary

or addressed to either party at such other address as such party shall hereafter furnish to the other party in writing. Copies of each such notice shall be given to the Vendor at P.O. Box 2258 (2 Hopkins Plaza, if by hand), Baltimore, Maryland 21203, Attention of Corporate Trust Department.

SECTION 18. LESSOR'S RIGHT TO PERFORM FOR LESSEE

If the Lessee fails to perform any of its agreements contained herein, the Lessor may upon notice to the Lessee perform such agreement, and the amount of the reasonable cost and expenses of the Lessor incurred in connection with such performance, together with interest on such amount at the rate of 12.67% per annum shall be payable by the Lessee upon demand, except as otherwise provided in this Lease. No such performance or compliance by the Lessor shall be deemed a waiver of the rights and remedies of the Lessor or any assignee of the Lessor against the Lessee hereunder, including, without limitation, the right of the Vendor to terminate this Lease pursuant to Article 15 of the CSA and the Lease Assignment, and no such performance or compliance by the Lessor shall be deemed to cure an Event of Default hereunder for purposes of Article 15 of the CSA except as otherwise provided in Section 15(f) of the CSA.

§ 19. SEVERABILITY; EFFECT AND MODIFICATION OF LEASE

Any provision of this lease which is prohibited or unenforceable in any jurisdiction shall be, as to such jurisdiction, ineffective to the extent of such prohibition or unenforceability without invalidating the remaining

provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

Except for the Participation Agreement, the Indemnity Agreement and the CSA, this Lease exclusively and completely states the rights of the Lessor and the Lessee with respect to the leasing of the Units and supersedes all other agreements, oral or written, with respect thereto. No variation or modification of this Lease and no waiver of any of its provisions or conditions shall be valid unless in writing and signed by duly authorized signatories for the Lessor and the Lessee.

§ 20. EXECUTION

This Lease may be executed in several counterparts, such counterparts together constituting but one and the same instrument, but the Vendor shall be deemed to be counterparts shall be deemed duplicates thereof. Although for convenience this Lease is dated as of the date first set forth above, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgment hereto annexed.

§ 21. LAW GOVERNING

The terms of this Lease and all rights and obligations hereunder shall be governed by the laws of the State of New York; provided, however, that the parties shall be entitled to all rights conferred by 49 U.S.C. § 11303 and such additional rights arising out of the filing or hereof, if any, and of any assignment hereof as shall be conferred by the law of the several jurisdictions in which this Lease or any assignment hereof shall be filed. This Agreement is being delivered in the City and State of New York and shall be effective when one or more counterparts which together have been executed by both parties shall be delivered to Cravath, Swaine & Moore in the City of New York. parties hereto hereby irrevocably consent to the jurisdiction of any federal or state court sitting in the City and State of New York in respect of any claim or dispute arising hereunder (except as to which arbitration is provided for in § 7 hereof).

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date first above written.	
•	THE DETROIT EDISON COMPANY,
	by
	Title:
[Corporate Seal]	
Attest:	
· .	
Assistant Secretary	
	THE BANK OF NEW YORK,
	by
	Title:

STATE OF MICHIGAN,) COUNTY OF WAYNE)	
personally appeared known, who, being by me duly of that one of the seals affixed the corporate seal of said co instrument was signed and sea tion by authority of its Boar	THE DETROIT EDISON COMPANY, to the foregoing instrument is rporation, and that said led on behalf of said corporadof Directors, and he acknowlhe foregoing instrument was the
<u>-</u>	Notary Public
[Notarial Seal] My Commission Expires	· —
STATE OF NEW YORK,) COUNTY OF NEW YORK)	·
personally appeared known, who, being by me duly of T instrument was signed on beha authority of its Board of Dir	he Bank of New York, that said lf of said corporation by ectors, and he/she acknowledged egoing instrument was the free
-	Notary Public
[Notarial Seal] My Commission Expires	

SCHEDULE A TO LEASE

Builder	Type	Builder's Plant	Quantity	Lessee's Identification Numbers (Both Inclusive)	Unit Base Price	Total Base Price	Estimated Time and Place of Delivery
Greenville Steel Car Company	108 Ton, 4,320 cu. ft. Aluminum bodied-steel underframed, rotary dump, gondola rail cars	Greenville, Pennsylvania	610	DEEX 8101-8710	\$38,651.88 \$2	38,651.88 \$23,577,646.80	Oct-Dec, 1985, at Builder's.

SCHEDULE B TO LEASE

RENTALS

Rental	Percentage of
Payment Dates	Purchase Price
1/2/87	3.2082143
7/2/87	5.2548105
1/2/88	3.0887954
7/2/88	5.3742294
1/2/89	2.9554403
7/2/89	5.5075844
1/2/90	2.8065227
7/2/90	5.656502被~①
1/2/91	2.6402264
7/2/91	5.8227983
1/2/92	2.5000710
7/2/92	5.9629537
1/2/93	2.3698942
7/2/93	6.0931332
1/2/94	2.2379703
7/2/94	8,1057266
1/2/95	2.0202552
7/2/95	8.3234417
1/2/96	1.8258758
7/2/96	8.5178210
1/2/97	1.6267800
7/2/97	8.7169169
1/2/98	1.4217260
7/2/98	8.9219709
1/2/99	1.0978916
7/2/99	9.2458052
1/2/00	0.6224609
7/2/00	9.7212360
1/2/01	0.0915474
7/2/01	10.2521495
1/2/02	0.000000
7/2/02	10.3436969
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Conditional Sale Agreement

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^{*}This Table of Contents has been included in this document for convenience only and does not form a part of or affect any construction or interpretation of this document.

CONDITIONAL SALE AGREEMENT dated as of October 1, 1985, between GREENVILLE STEEL CAR COMPANY, a Pennsylvania corporation (said corporation being hereinafter called the "Builder" or the "Vendor", as the context may require, all as more particularly set forth in Article 1 hereof) and THE BANK OF NEW YORK, a New York corporation (the "Vendee").

WHEREAS the Builder has agreed to construct, sell and deliver to the Vendee, and the Vendee has agreed to purchase, the railroad equipment described in Annex B hereto to the extent not excluded herefrom under the provisions hereof (the "Equipment");

WHEREAS the Vendee is entering into a Lease of Railroad Equipment with The Detroit Edison Company (the "Lessee") in substantially the form annexed hereto as Annex C (the "Lease") pursuant to which the Lessee will lease from the Vendee all the units of Equipment delivered and accepted hereunder; and

WHEREAS Mercantile-Safe Deposit and Trust Company (hereinafter called the "Assignee" or the "Vendor" as more particularly set forth in Article 1 hereof) is acting as Agent for the institutional investor (the "Investor") named in that certain Participation Agreement dated as of the date hereof (the "Participation Agreement") among the Assignee, the Lessee, the Vendee and the Investor.

NOW, THEREFORE, in consideration of the mutual promises and agreements hereinafter set forth, the parties hereto do hereby agree as follows:

ARTICLE 1. Assignment; Definitions. The parties hereto contemplate that the Vendee will furnish that portion of the Purchase Price (as hereinafter defined) of the Equipment as is required under subparagraph (a) of the third paragraph of Article 4 hereof and that an amount equal to the balance of such Purchase Price shall be paid to the Builder pursuant to an Agreement and Assignment (the "CSA Assignment") dated as of the date hereof between the Builder and the Assignee.

The term "Vendor", whenever used in this Agreement, means, before any assignment of its rights hereunder, the Builder and any successor or successors for the time being to its manufacturing properties and business, and, after any such assignment, both any assignee or

assignees for the time being of such particular assigned rights as regards such rights, and also any assignor as regards any rights hereunder that are retained or excluded from any assignment; and the term "Builder", whenever used in this Agreement, means, both before and after any such assignment, the Builder and any successor or successors for the time being to its manufacturing properties and business.

The parties hereto contemplate that the Vendee will assign to the Assignee, as security for the payment and performance of all the Vendee's obligations hereunder, certain rights, title, and interests of the Vendee in and to the Lease, pursuant to an Assignment of Lease and Agreement in the form of Annex D hereto (the "Lease Assignment") and the Lessee will consent thereto pursuant to a Consent and Agreement (the "Consent").

ARTICLE 2. Construction and Sale. Pursuant to this Agreement, the Builder shall construct the units of Equipment and will sell and deliver to the Vendee, and the Vendee will purchase from the Builder, and accept delivery of and pay for (as hereinafter provided and subject to the limitations hereinafter set forth), the Equipment, each unit of which shall be constructed in accordance with the Purchase Order and the specifications referred to in Annex B hereto and in accordance with such modifications thereof as may be agreed upon in writing between the Builder, the Vendee and the Lessee (which specifications and modifications, if any, are hereinafter called the "Specifications"). The design, quality and component parts of each unit of the equipment shall conform, on the date of completion of manufacture thereof, to all United States Department of Transportation and Interstate Commerce Commission requirements and specifications and to all standards, if any, recommended by the Association of American Railroads reasonably interpreted as being applicable to railroad equipment of the character of such unit, and each such unit will be new railroad equipment, when delivered.

ARTICLE 3. <u>Inspection and Delivery</u>. The Builder will deliver the units of the Equipment to the Vendee at the

place or places specified in Annex B hereto, freight, storage and insurance charges, if any, to the place of delivery specified in said Annex B prepaid, in accordance with the delivery schedule set forth in Annex B hereto; provided, however, that delivery of any unit of the Equipment shall not be made (i) until this Agreement, the Lease, the CSA Assignment and the Lease Assignment have been filed pursuant to 49 U.S.C. § 11303; (ii) subsequent to the commencement of any proceedings or the occurrence of any event specified in clauses (c) or (d) of Article 15 hereof or the occurrence of any event of default (as described in Article 15 hereof), or event which, with the lapse of time and/or demand, could constitute such an event of default (any such commencement, occurrence, event of default or event being hereinafter in this Agreement called a "Default"); or (iii) if the Purchase Price for such unit when added to the aggregate Purchase Price of (A) all units theretofore delivered and accepted under and made subject to this Agreement and (B) all other units proposed to be delivered and accepted under and made subject to this Agreement concurrently with such unit would exceed the Maximum Purchase Price for the Equipment specified in Item 5 of Annex A hereto (or such higher amount as the Vendee and the Assignee may have agreed to pursuant to Article 4). Builder agrees not to deliver any unit of the Equipment hereunder (a) following receipt of written notice from the Vendee or the Assignee (i) of a Default, or (ii) that there has been a material adverse change in the business prospects or financial condition of the Lessee since the date of the most recent financial statements referred to in Paragraph 4(b) of the Participation Agreement, and (b) until it receives notice from the Vendee and the Assignee that the conditions contained in Paragraphs 7 and 8 of the Participation Agreement have been met.

Any unit of Equipment not delivered at the time of receipt by the Builder of the notice specified in clause (a) of the last sentence of the first paragraph of this Article 3 and any unit of Equipment not delivered and accepted hereunder on or prior to April 30, 1986, by reason of noncompliance with the conditions referred to in the next preceding paragraph or causes set forth in the next succeeding paragraph or otherwise shall be excluded from this Agreement and the Vendee shall be relieved of its obligation to purchase and pay for such unit of Equipment. If any unit of Equipment shall be excluded herefrom pursuant to the immediately preceding sentence, the Vendee and the Builder (and any assignee of the Builder) shall execute an agreement supplemental hereto limiting this Agreement to the

units of Equipment not so excluded herefrom. Pursuant to the Participation Agreement the Lessee has agreed to purchase such excluded Equipment and any Equipment excluded from this agreement pursuant to the first paragraph of Article 4 hereof from the Builder, upon the satisfaction or waiver of any conditions of the Purchase Order, all as provided in Paragraph 1 of the Participation Agreement. The Vendee and the Assignee agree, upon any such exclusion, to take such steps, including the execution of instruments of transfer, as may be reasonably requested by the Lessee for the purpose of acknowledging and perfecting the interest of the Lessee in any unit of Equipment so excluded from this Agreement, and the Vendee and the Assignee shall have no further obligation or liability in respect of units so excluded.

The Builder's obligation as to the time of delivery set forth in Annex B is subject, however, to delays resulting from causes beyond the Builder's reasonable control, including but not limited to, acts of God, acts of government such as embargoes, priorities and allocations, war or war conditions, riot or civil commotion, sabotage, strikes, differences with workmen, accidents, fire, flood, explosion, damage to plant, equipment or facilities, delays in receiving necessary materials or delays of carriers or subcontractors.

During construction, the Equipment shall be subject to inspection and approval by the authorized inspectors of the Vendee (who may be employees of the Lessee) and the Builder shall grant to such inspectors reasonable access to its plant. The Builder agrees to inspect the materials used in the construction of the Equipment in accordance with its standard quality control Upon completion of each unit or a number of practices. units of the Equipment, such unit or units shall be presented to an inspector of the Vendee for inspection at the place specified for delivery, and if each such unit conforms to the specifications, requirements and standards applicable thereto, such inspector or an authorized representative of the Vendee (who may be an employee of the Lessee) shall execute and deliver to the Builder a certificate of acceptance (the "Certificate of Acceptance") substantially in the form of Schedule D to the Lease; provided, however, that the Builder shall not thereby be relieved of its warranty referred to in Articles 2 and 13 By § 2 of the Lease, the Vendee is appointing the Lessee its agent to inspect and accept delivery of the Equipment. Acceptance of any unit of Equipment by the

Lessee (or its employees or agents, as aforesaid) pursuant to § 2 of the Lease shall be deemed to be acceptance of such unit by the Vendee hereunder.

Upon delivery and acceptance of each such unit hereunder at the place specified for delivery, the Builder shall have no further responsibility for, nor bear any risk of, any damage to or the destruction or loss of such unit; provided, however, that the Builder shall not thereby be relieved of its warranty referred to in Articles 2 and 13 hereof.

Notwithstanding the foregoing or any other provision of this Agreement to the contrary, the delivery to and acceptance by or on behalf of the Vendee of any unit of Equipment excluded from this Agreement pursuant to the first paragraph of Article 4 hereof shall be ineffective, ab initio, to create in or transfer to the Vendee any legal or beneficial right or interest in such unit or (except as provided in the first paragraph of Article 4 hereof) to impose on the Vendee any liability, obligation or responsibility with respect thereto; any right or interest in any such unit created in or transferred to or purported to be created in or transferred to the Vendee shall be held by the Vendee solely as trustee for the benefit of the Builder.

ARTICLE 4. Purchase Price and Payment. The base price or prices per unit of the Equipment are set forth in Annex B hereto. Such base price or prices are subject to such increase or decrease as is agreed to by the Builder, the Vendee and the Lessee, including prepaid insurance, storage and freight charges, if any, to the place of delivery specified in said Annex B, but excluding sales The term "Purchase Price" as used herein shall mean taxes. the base price or prices per unit of the Equipment as so increased or decreased as set forth in the Builder's invoice or invoices delivered to the Vendee (the "Invoices") and, if the Purchase Price is other than the base price or prices set forth in Annex B, the Invoices shall be accompanied by, or have endorsed thereon, the agreement or approval of the Lessee and the Vendee. If on any Closing Date the aggregate Purchase Price of the Equipment for which settlement has theretofore been or is then being made would, but for the provisions of this sentence, exceed the Maximum Purchase Price specified in Item 5 of Annex A hereto (or such higher amount as the Vendee and the Assignee may at its option agree to prior to delivery of any unit or units of Equipment that, but for such agreement, would be excluded from this

Agreement), the Builder (and any assignee of the Builder) and the Vendee will enter into an agreement excluding from this agreement such unit or units of Equipment then proposed to be settled for and specified by the Vendee, as will, after giving effect to such exclusion, reduce such aggregate Purchase Price to not more than such Maximum Purchase Price (or such higher amount as aforesaid).

The Equipment shall be settled for in such number of groups of units of the Equipment as is provided in Item 2 of Annex A hereto (each such group being hereinafter called the "Group"). The term "Closing Date" with respect to any Group shall mean such date, which shall be the last business day of any month or such other day as may be established pursuant to the provisions of the first paragraph of Paragraph 2 of the Participation Agreement, but in no event earlier than October 31, 1985, nor later than April 30, 1986, occurring following presentation by the Builder to the Vendee of the Invoices and Certificates of Acceptance for such Group and written notice thereof by the Builder to the Lessee, as shall be fixed by the Lessee by written notice delivered to the Vendee and the Vendor at least five business days prior to the Closing Date designated therein. The term "business day" as used herein means any calendar day, excluding Saturdays, Sundays and any other day on which banking institutions in New York, New York, or Baltimore, Maryland, are authorized or obligated to remain closed.

The Vendee hereby acknowledges itself to be indebted to the Vendor in the amount of, and hereby promises to pay in immediately available funds to the Vendor at such place as the Vendor may designate, the Purchase Price of the equipment, as follows:

- (a) on the Closing Date with respect to the Group an amount equal to 45.0177504% of the aggregate Purchase Price of the Group; and
- (b) in 15 installments, as hereinafter provided, an amount equal to the aggregate Purchase Price of the units of equipment, less the aggregate amount paid or payable with respect thereto pursuant to subparagraph (a) of this paragraph.

The portion of the Purchase Price payable pursuant to subparagraph (b) of the preceding paragraph (the "CSA Indebtedness") shall be payable on the dates set forth in Schedule I hereto commencing July 2, 1987, with a final payment due on July 2, 2001, (or, if any such date is not a

business day, on the next preceding business day). unpaid principal of the CSA Indebtedness from time to time outstanding shall bear interest at the rate of 11.67% per Interest accrued on the CSA Indebtedness shall be due and payable in arrears on each January 2 and July 2 commencing on July 2, 1986. The installments of principal payable on each payment date shall be calculated so that the amount and allocation of principal and interest payable on each payment date shall be substantially in proportion to the allocation set forth in Schedule I hereto (subject to the provisions of Article 7 hereof) and the aggregate of such installments of principal will completely amortize the CSA Indebtedness. The Vendee will furnish to the Vendor and the Lessee promptly after the last Closing Date a schedule showing the respective amounts of principal and interest payable on each payment date.

Interest under this Agreement shall be determined on the basis of a 360-day year of twelve 30-day months.

The Vendee will pay, to the extent legally enforceable, interest upon all amounts remaining unpaid on the certificates after the same shall have become due and payable pursuant to the terms hereof at the rate of 12.67% per annum (the "Overdue Rate").

All payments provided for in this Agreement shall be made in such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts. Except as provided in Article 7 hereof, the Vendee shall not have the privilege of prepaying any portion of the CSA Indebtedness prior to the date it becomes due.

Notwithstanding any other provision of this Agreement (including, but not limited to, any provision of Articles 15 and 16 hereof), but not limiting the effect of Article 21 hereof, the liability of the Vendee or any assignee of the Vendee for all payments to be made by it under this Agreement, including any liability arising out of or in connection with the performance of its obligations hereunder (and excluding only the obligation to pay interest on the CSA Indebtedness accrued to July 2, 1986, the obligations set forth in the proviso in the third paragraph of Article 12 hereof and the payments to be made pursuant to subparagraph (a) of the third paragraph of this Article) shall not exceed an amount equal to, and shall be payable only out of, the "income and proceeds from the Equipment" (as hereinafter defined), and such payments shall be made by

the Vendee only to the extent that the Vendee (or any such assignee) shall have actually received sufficient "income and proceeds from the Equipment" to make such payments. Except as provided in the next preceding sentence, the Vendee (and any such assignee) shall have no personal liability to make any payments under this Agreement except from the "income and proceeds from the Equipment". As used herein the term "income and proceeds from the Equipment" shall mean (i) if one of the events of default specified in Article 15 hereof shall have occurred and while it shall be continuing, so much of the following amounts as are indefeasibly received by the Vendee (or any such assignee) at any time after any such event and during the continuance (a) all amounts of rental and amounts in respect thereof: of Casualty Occurrences and any Termination (as such terms are defined in Article 7 hereof) paid for or with respect to the Equipment pursuant to the Lease and any and all other payments received under § 10 or any other provision of the Lease (other than any Excluded Payments as defined in the Lease Assignment), and (b) any and all payments or proceeds received for or with respect to the Equipment as the result of the sale, lease or other disposition thereof, after deducting all costs and expenses of such sale, lease or other disposition, and (ii) at any other time only that portion of the amounts referred to in the foregoing clauses (a) and (b) as are indefeasibly received by the Vendee (or any such assignee) and as shall equal the portion of the CSA Indebtedness (including repayments thereof required in respect of Casualty Occurrences and any Termination) and/or interest thereon due and payable on the date such amounts were required to be paid pursuant to the Lease or as shall equal any other payments then due and payable under this Agreement; it being understood that "income and proceeds from the Equipment" shall in no event include amounts referred to in the foregoing clauses (a) and (b) received by the Vendee (or any such assignee) prior to the existence of such an event of default which exceeded the amounts required to discharge that portion of the CSA Indebtedness (including such pre-payments) and/or interest thereon due and payable on the date on which amounts with respect thereto received by the Vendee (or any such assignee) were required to be paid to it pursuant to the Lease or which exceeded any other payments due and payable under this Agreement at the time such amounts were payable under the Lease. Notwithstanding anything to the contrary contained in this Agreement, in the event the Vendor shall obtain a judgment against the Vendee for an amount in excess of the amounts payable by the Vendee pursuant to the limitations set forth in this paragraph, the

Vendor will limit its execution of such judgment to amounts payable pursuant to the limitations set forth in this paragraph. Nothing contained in this Article 4 shall prevent the Vendor from enforcing and retaining the proceeds of any personal recourse obligation of the Vendee under the Participation Agreement. Nothing contained herein limiting the liability of the Vendee shall derogate from the right of the Vendor to proceed against the equipment or against the Lessee under and as provided in the Lease and the Lease Assignment for the full unpaid Purchase Price of the Equipment and accrued interest thereon and all other payments and obligations hereunder.

The Vendor shall and hereby does retain a security interest in the Equipment until the Vendee shall have made all its payments under this Agreement, notwithstanding any provision of this Agreement limiting the liability of the Vendee and notwithstanding the delivery of the Equipment to and the possession and use thereof by the Vendee and the Lessee as provided in this Agreement and the Lease. Any and all parts installed on and additions and replacements made to any unit of the Equipment which shall constitute accessions to the Equipment pursuant to § 9.3 of the Lease and shall be subject to all the terms and conditions of this Agreement and included in the term "Equipment" as used in this Agreement.

Except as otherwise specifically provided in Article 7 hereof, when and only when the Vendor shall have been paid the full indebtedness in respect of the Purchase Price of the Equipment, together with accrued interest and all other payments as herein provided, absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Vendee without further transfer or action on the part of the Vendor. However, the Vendor, if so requested by the Vendee at that time, will (a) execute an instrument releasing its security interest in the Equipment and transferring such interest to the Vendee or upon its order, free of all liens, security interests and other encumbrances created or retained hereby or otherwise created by the Vendor and deliver such instrument to the Vendee at its address referred to in Article 20 hereof, (b) execute and deliver at the same place, for filing in all necessary public offices, such instrument or instruments in writing as may be necessary or appropriate in order then to make clear upon the public records the title of the Vendee to the Equipment and (c) pay to the Vendee any money paid to the Vendee pursuant to Article 7 hereof and not theretofore applied as provided therein. The Vendee hereby waives and releases any and all rights existing or that may be acquired in or to the payment of any penalty, forfeit or damages for failure to execute and deliver such instrument or instruments or to file any certificate of payment in compliance with any law or statute requiring the filing of the same, except for failure to execute and deliver such instrument or instruments or to file such certificate within a reasonable time after written demand by the Vendee.

ARTICLE 6. Taxes. Whether or not any of the transactions contemplated hereby are consummated, the Vendee will pay, or cause to be paid, and will indemnify and hold the Vendor harmless from, all Taxes (as defined in § 6 of the Lease) for which indemnification is required by the Lessee under the Lease excluding, however: (i) Taxes of the United States of America or any state or political subdivision thereof imposed on or measured solely by the net income or excess profits of the Vendor, or value-added taxes in lieu of any such net income or excess profits taxes, other than Taxes arising out of or imposed in respect of the receipt of indemnification payments pursuant to this Agreement; and (ii) any Taxes imposed on or measured by any fees or compensation received by the Vendor; provided, however, that the Vendee shall not be required to pay any Taxes during the period it may be contesting the same in the manner provided in the next paragraph below.

If claim is made against the Vendor for any Taxes indemnified against under this Article 6, the Vendor shall promptly notify the Vendee and the Lessee. If reasonably requested by the Vendee in writing and so long as the Lessee is prohibited or impaired from doing so in its own name, the Vendor shall, upon receipt of any indemnity reasonably satisfactory to it for all costs, expenses, losses, legal and accountants' fees and disbursements, penalties, fines, additions to tax and interest, and at the expense of the Vendee, contest in good faith the validity, applicability or amount of such Taxes by (a) resisting payment thereof if legally permissible (provided that the nonpayment thereof does not, in the opinion of the Vendor, adversely affect the interest of the Vendor in and to the Equipment hereunder), (b) not paying the same except under protest, if protest is necessary and proper, and (c) if payment is made, using reasonable efforts to obtain a refund thereof in appropriate administrative or judicial proceedings, or both. The Vendee may also contest, at its own expense, the validity, applicability or amount of such Taxes in the name of the Vendor; provided, however, that no proceeding or action relating to such contest shall be commenced (nor shall any pleading, motion, brief or other paper be submitted or filed in the name of the Vendor in any such proceeding or action) without the prior written consent of the Vendor. Vendor shall obtain a refund of all or any part of such

Taxes previously reimbursed by the Vendee in connection with any such contest or an amount representing interest thereon, the Vendor shall pay the Vendee the amount of such refund or interest net of expenses; provided, however, that no event of default set forth in Article 15 hereof and no event which with notice or lapse of time or both would constitute such an event of default shall have occurred and be continuing.

In case any report or return is required to be made with respect to any obligation of the Vendee under or arising out of this Article 6, the Vendee shall either make such report or return in such manner as will show the interests of the Vendor in the Equipment or shall promptly notify the Vendor of such requirement and shall make such report or return in such manner as shall be reasonably satisfactory to the Vendor. All costs and expenses (including legal and accountants' fees) of preparing any such return or report shall be borne by the Vendee.

ARTICLE 7. Maintenance, Termination and Casualty Occurrences. The Vendee shall, at its own cost and expense, maintain, service, repair and/or overhaul, as necessary, each unit of equipment so that each unit of Equipment will remain (a) in good operating condition (ordinary wear and tear excepted) for its intended purpose, (b) in compliance with any and all applicable laws and regulations and all mandatory safety bulletins issued by the Builder applicable to the equipment, and (c) meet the standards then in effect under the interchange rules of the American Association of Railroads.

In the event that the Lease is terminated pursuant to § 7.8 of the Lease (a "Termination") or any unit of the Equipment shall suffer a Casualty Occurrence (as defined in § 7.2 of the Lease) the Vendee shall, promptly after it shall have received notice from the Lessee or has otherwise been informed of a Termination or it shall have determined that such unit has suffered a Casualty Occurrence, cause the Vendor to be fully informed in regard thereto. On the Casualty Payment Date (as defined in § 7.2 of the Lease) next succeeding such notice on or after the Casualty Occurrence or on the Termination Date (as defined in § 7.8 of the Lease) in the case of a Termination (each such date being hereinafter called a "Settlement Date"), the Vendee shall pay to the Vendor (i) in the case of a Casualty Occurrence, an amount equal to the Casualty Value (as hereinafter defined in this Article) of such unit suffering a Casualty Occurrence as of such Settlement Date and (ii) in the case of a Termination, a sum equal to the Termination

Value (as hereinafter defined in this Article 7) of such unit subject to such Termination as of such Settlement Date. The Vendee shall file, or cause to be filed, with the Vendor a certificate setting forth the Casualty Value of such unit or the Termination Value of such unit, as the case may be. Any money paid to the Vendor pursuant to this paragraph shall be applied (after the payment of the interest and principal, if any, on and of the CSA Indebtedness due on such date) to prepay the installments of the CSA Indebtedness (ratably in accordance with the unpaid balance of each such installment) together with all unpaid and accrued interest thereon, and the Vendee will promptly furnish to the Vendor and the Lessee a revised schedule of payments of principal and interest with respect to the CSA Indebtedness thereafter to be made. Concurrently with the payment of Termination Value for any unit effected by a Termination, the Vendee shall pay to the Vendor as a premium, the percentage of the principal amount of the CSA Indebtedness being prepaid in connection therewith, depending on the Settlement Date on which such prepayment occurs, as follows:

Settlement Date	Premium
1/2 or 7/2/96 1/2 or 7/2/97 1/2 or 7/2/98 1/2 or 7/2/99 1/2 or 7/2/00 1/2/01	5% 4 3 2 1 0

In the event of the requisition of use by any governmental authority of any unit of the Equipment not constituting a Casualty Occurrence, all of the Vendee's obligations hereunder with respect to such unit shall continue to the same extent as if such requisition had not occurred.

Upon payment by the Vendee to the Vendor (i) of the Casualty Value of any unit of the Equipment having suffered a Casualty Occurrence or (ii) of the Termination Value of any unit in connection with a Termination, absolute right to the possession of, title to and property in such unit shall pass to and vest in the Vendee, without further transfer or action on the part of the Vendor, except that the Vendor, if requested by the Vendee, will execute and deliver to the Vendee, at the expense of the Vendee, an appropriate instrument confirming the release of the Vendor's security interest in such unit, in recordable form,

in order that the Vendee may make clear upon the public records the title of the Vendee to such unit.

The Casualty Value of each unit of the Equipment suffering a Casualty Occurrence shall be deemed to be that portion of the original Purchase Price thereof referred to in subparagraph (b) of the third paragraph of Article 4 hereof remaining unpaid on the Settlement Date with respect to such unit (without giving effect to any prepayment or prepayments theretofore made under this Article with respect to any other unit), plus interest accrued thereon but unpaid as of such Settlement Date. For the purpose of this paragraph, each payment of the Purchase Price in respect of Equipment made pursuant to Article 4 hereof shall be deemed to be a payment on each unit of the Equipment in like proportion as the original Purchase Price of such unit bears to the aggregate original Purchase Price of the Equipment.

The Termination Value of any unit shall be equal to the Casualty Value thereof.

The Vendee will cause the Equipment to be insured as provided in § 7.6 of the Lease. If the Vendor shall receive any insurance proceeds or condemnation payments in respect of such units suffering a Casualty Occurrence, the Vendor shall, subject to having received payment of the Casualty Value and provided no Default shall have occurred and be continuing, pay such insurance proceeds or condemnation payments to the Vendee. All insurance proceeds or condemnation payments received by the Vendor in respect of any unit of Equipment not suffering a Casualty Occurrence shall be paid to the Vendee upon reasonable proof satisfactory to the Vendor that any damage to such unit in respect of which such proceeds were paid has been fully repaired so as to comply with the provisions of the first paragraph of this Article 7, provided no Default shall have occurred and be continuing.

ARTICLE 8. Reports and Inspections. On or before April 30 in each year, commencing with the year 1986, the Vendee shall cause to be furnished to the Vendor an accurate statement to the effect set forth in § 8 of the Lease.

ARTICLE 9. Marking of Equipment. The Vendee will cause each unit of the Equipment to be kept numbered and marked as provided in § 5 of the Lease. The Vendee will not permit any such unit to be placed in operation or exercise any control or dominion over the same until such markings

shall have been made thereon and will replace or will cause to be replaced promptly any such markings which may be removed, obliterated, defaced or destroyed. The Vendee will not permit the identification number of any unit of the Equipment to be changed except in accordance with a statement of new number or numbers to be substituted therefor, which statement previously shall have been filed with the Vendor and filed and deposited by the Vendee in all public offices where this Agreement shall have been filed and deposited.

Except as provided in the immediately preceding paragraph, the Vendee will not allow the name of any person, association or corporation to be placed on any unit of the Equipment as a designation that might be interpreted as a claim of ownership; provided, however, that the Equipment may be lettered with the names or initials or other insignia customarily used by the Lessee thereof or its affiliates.

ARTICLE 10. Compliance with Laws and Rules. During the term of this Agreement, the Vendee will comply, and will cause every lessee or user of the Equipment to comply, in all respects (including, without limitation, with respect to the use, maintenance and operation of the Equipment) with all Applicable Laws (as defined in § 9 of the Lease) and in the event that any Applicable Laws require any alteration, replacement, addition or modification of or to any part on any unit of the Equipment, the Vendee will conform therewith at its own expense; provided, however, that the Vendee or the Lessee may, in good faith, contest the validity or application of any such law or rule in any reasonable manner which does not, in the reasonable opinion of the Vendor, adversely affect the property or rights of the Vendor under this Agreement.

ARTICLE 11. Possession and Use. The Vendee, so long as an event of default shall not have occurred and be continuing under this Agreement, shall be entitled, from and after delivery of the equipment to the Vendee, to the possession of the Equipment and the use thereof, but only upon and subject to all the terms and conditions of this Agreement.

The parties hereto acknowledge that the Vendee simultaneously is leasing the Equipment to the Lessee as provided in the Lease, and the rights of the Lessee and its permitted assigns under the Lease shall be subordinated and junior in rank to the rights, and shall be subject to the remedies, of the Vendor under this Agreement.

Prohibition Against Liens. ARTICLE 12. Vendee will pay or discharge any and all sums claimed by any party from, through or under the Vendee or its successors or assigns which, if unpaid, might become a lien, charge or security interest on or with respect to the Equipment, or any unit thereof, or the interest of the Vendor therein, or the Vendee's interests in the Lease and the payments to be made thereunder and will promptly discharge any such lien, charge or security interest which arises, but shall not be required to pay or discharge any such claim so long as the validity thereof shall be contested in good faith and by appropriate legal or administrative proceedings in any reasonable manner and the nonpayment thereof does not, in the reasonable opinion of the Vendor, materially and adversely affect the title or interests of the Vendor in or to the Equipment or the Lease or otherwise under this Agreement. Any amount paid by the Vendor in discharge of such liens, charges or security interests upon the Equipment or the Lease shall be secured by and under this Agreement.

This covenant will not be deemed breached by reason of liens for taxes, assessments or governmental charges or levies, in each case not due and delinquent, or undetermined or inchoate materialmen's, mechanics', workmen's, repairmen's or other like liens arising in the ordinary course of business and, in each case, not delinquent.

The foregoing provisions of this Article 12 shall be subject to the limitations set forth in the last paragraph of Article 4 hereof and the provisions of Article 21 hereof; provided, however, that the Vendee will pay or discharge any and all claims, liens, charges or security interests claimed by any party from, through or under the Vendee not arising out of the transactions contemplated hereby (but including tax liens arising out of the receipt of rentals and other payments under the Lease and other proceeds from the Equipment) which, if unpaid, might become a lien, charge or security interest on or with respect to the Equipment, or any unit thereof, or the Vendee's interest in the Lease and the payments to be made thereunder, but the Vendee shall not be required to pay or discharge any such claim so long as the validity thereof shall be contested in good faith and by appropriate legal or administrative proceedings in any reasonable manner and the nonpayment thereof does not, in the reasonable opinion of the Vendor, materially and adversely affect the security interest of the Vendor in or to the Equipment or otherwise under this Agreement or in and to the Lease and the payments to be made thereunder.

ARTICLE 13. Indemnities and Warranties. Vendee agrees to indemnify, protect and hold harmless the Vendor its successors, assigns, agents and servants (the "Indemnified Persons") from and against all Indemnified Matters (as defined in § 9.4 of the Lease) except however, in the case of the Builder, any losses, damages, injuries, liabilities, claims and demands whatsoever arising out of any breach of warranty or failure to perform any covenant hereunder by the Builders. This covenant of indemnity shall continue in full force and effect notwithstanding the full payment of the indebtedness in respect of the Purchase Price of, and the release of the Vendor's security interest in, the Equipment, as provided in Article 5 hereof, or the termination of this Agreement in any manner whatsoever.

The Vendee will bear the responsibility for and risk of, and shall not be released from its obligations hereunder (except as provided in Article 21 hereof) in the event of, any damage to or the destruction or loss of any unit of or all the Equipment.

The Builder represents and warrants to the Vendee that, at the time of delivery and acceptance of each unit of Equipment under this Agreement, the Vendee will have good and marketable title to such unit, free and clear of all claims, liens, security interests and other encumbrances of any nature except only the rights of the Vendor under this Agreement and the rights of the Lessee under the Lease.

The agreements of the parties relating to the Builder's warranty of material and workmanship and patent indemnification, and the agreement of the parties relating to the Builder's limitation of liability, are set forth in Items 3 and 4 of Annex A hereto. Such warranties and covenants of patent indemnity shall continue in full force and effect notwithstanding the full payment of all sums due under this Agreement or the satisfactory discharge or termination of this Agreement in any manner whatsoever.

The Builder hereby represents and warrants to the Vendee that this Agreement has been duly authorized by the Builder and lawfully executed and delivered by it for a valid consideration and that, assuming due authorization, execution and delivery by the Vendee, this Agreement is, insofar as the Builder is concerned, a legal, valid and binding instrument, enforceable against the Builder in accordance with its terms.

The Builder represents that it is not entering into this Agreement, or into any other transaction

contemplated by the Participation Agreement, directly or indirectly in connection with any arrangement or understanding by it in any way involving any employee benefit plan (other than a governmental plan) with respect to which it, or, insofar as is known to it, any party to the Participation Agreement is a party in interest, all within the meaning of the Employee Retirement Income Security Act of 1974, as amended.

The Vendee will not, ARTICLE 14. Assignments. except as provided in Article 11 hereof, transfer the right to possession of any unit of the Equipment, or sell, assign or otherwise dispose of any of its rights under this Agreement, except that all, or any part which is at least 25%, of the right, title and interest of the Vendee in and to the Equipment, this Agreement and the Lease may be assigned, conveyed or transferred by the Vendee to (a) any bank, trust company, insurance company or other financial institution organized under the laws of the United States or any state and having a combined capital and surplus or net worth, as the case may be, of at least \$50,000,000, (b) any other company having a net worth of at least \$50,000,000 which at the time of transfer has outstanding publicly held debt securities rated A or better by a nationally recognized rating service or which, within one year prior to such transfer, has received such a rating on any debt issued by such company, in each case not dependent on an unaffiliated third party credit support or (c) any corporation which is an affiliate or subsidiary, wholly owned or otherwise, of the Vendee (any such institution or corporation to whom such interest may be assigned, conveyed or transferred being hereinafter referred to as the "Transferee"); provided, however, that no more than three such transfers may be made by the original Vendee and each Transferee may only transfer all, but not less than all, its such interest to a single Transferee Notwithstanding the immediately preceding sentence, if the transfer occurs pursuant to (c) above, the transferor shall remain secondarily liable for all obligations of the Transferee unless the Transferee shall have a net worth of at least \$50,000,000 at the time of the transfer or, prior to the transfer, the Vendee enters into an amendment of this Agreement, in form and substance satisfactory to the Agent, to the effect that it will constitute an event of default under this Agreement if, without the prior written consent of the Agent, the Transferee while still the owner of such right, title and interest in and to the Equipment, this Agreement and the Lease at any time ceases to be a member of the Vendee's affiliate group includible in the consolidated Federal income tax return of such group or a member of another parent company's affiliate group includible in the consolidated Federal income tax return of such group in respect of which the parent company meets the conditions

set forth in clause (a) or (b) of the first sentence of this paragraph. In the event of any such assignment, conveyance or transfer, the Transferee shall become a party to each of the Vendee's Documents and will agree to be bound by all the terms of and will undertake all of the obligations of the Vendee contained in its Documents in such manner as is satisfactory to the Lessee and the Agent. Nothing contained herein shall be deemed to restrict, or require any person's (including without limitation, the Builder, the Vendor, or the Investor) consent to, the merger or consolidation of the Vendee into or with any other person; provided, however, that the surviving entity shall meet the conditions set forth in clause (a) or (b) of the first sentence of this paragraph rexcept that in the case of clause (b) the such shall not be required to meet the rating conditions set forth

All or any of the rights, benefits and advantages of the Vendor under this Agreement, including the right to receive the payments herein provided to be made by the Vendee, may be assigned by the Vendor and reassigned by any assignee at any time or from time to time. No such assignment shall subject any assignee to, or relieve the Builder from, any of the obligations of the Builder to construct and deliver the Equipment in accordance herewith or to respond to its warranties and indemnities referred to in Article 13 hereof, or relieve the Vendee of its obligations to the Builder contained in Articles 2, 3, 4, 6 and 13 hereof, Annex A hereto and this Article 14, or any other obligation which, according to its terms or context, is intended to survive an assignment.

Upon any such assignment, either the assignor or the assignee shall give written notice to the Vendee and the Lessee, together with a copy of such assignment, stating the identity and post office address of the assignee, and such assignee shall, by virtue of such assignment, acquire all the assignor's right, title and interest in and to the Equipment and this Agreement, or in and to a portion thereof, as the case may be, subject only to such reservations as may be contained in such assignment. From and after the receipt by the Vendee of the notification of any such assignment, all payments thereafter to be made by the Vendee under this Agreement shall, to the extent so assigned, be made to the assignee at such address as it may direct.

The Vendee recognizes that this Agreement will be assigned to the Assignee as provided in the CSA Assignment. The Vendee expressly represents, for the purpose of assurance to any person, firm or corporation considering the acquisition of this Agreement or of all or any of the rights of the Vendor hereunder, and for the purpose of inducing such acquisition, that the rights of the assignee to the entire unpaid indebtedness in respect of the Purchase Price of the Equipment or such part thereof as may be assigned

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and, provided, however, that such a transfer may be made to an entity which does not meet the conditions of clause (a) or (b) with the consent of the Vendor, which consent shall not be unreasonably withheld.

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, except that in the case of clause (b) the surviving entity shall not be required to meet the rating conditions set forth therein.

together with interest thereon, as well as any other rights hereunder which may be so assigned, shall not be subject to any defense, setoff, counterclaim or recoupment whatsoever arising out of any breach of any obligation of the Builder with respect to the Equipment or the construction, delivery or warranty thereof, or with respect to any indemnity herein contained, nor subject to any defense, setoff, counterclaim or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to the Vendee or the Lessee by the Builder. Any and all such obligations, howsoever arising, shall be and remain enforceable by the Vendee or the Lessee against and only against the Builder.

ARTICLE 15. <u>Defaults</u>. In the event that any one or more of the following events of default shall occur and be continuing:

- (a) the Vendee shall fail to pay in full any sum payable by the Vendee when payment thereof shall be due hereunder (irrespective of the provisions of Article 4 or 21 hereof or any other provision of this Agreement limiting the liability of the Vendee) and such default shall continue for 10 business days after the date such payment is due and payable; or
- default shall be made in the observance or performance of any other of the conditions and agreements on the part of the Vendee (irrespective of the provisions of Article 4 or 21 hereof or any other provision of this Agreement limiting the liability of the Vendee) or the Lessee contained herein or in the Participation Agreement or the Lease Assignment or the Consent, and such default shall continue for 30 days after the earlier of (i) written notice from the Vendor to the Vendee specifying the default and demanding that the same be remedied and (ii) the date on which such default shall first become known to any responsible officer of the Vendee (the term "known to any responsible officer of the Vendee" shall mean actual knowledge by a responsible officer of the Vendee having responsibility for the transaction contemplated hereby); or
- (c) a petition for reorganization under Title 11 of the United States Code, as now constituted or as hereafter amended, shall be filed by or against the Lessee and, unless such petition shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Lessee under the Lease and the Consent shall not have been and shall not

continue to be duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees appointed (whether or not subject to ratification) in such proceedings in such manner that such obligations shall have the same status as expenses of administration and obligations incurred by such trustee or trustees within 60 days after such petition shall have been filed and otherwise in accordance with the provisions of 11 U.S.C. § 1168, or any successor provision, as the same may hereafter be amended; or

- any other proceeding shall be commenced by or against the Vendee or the Lessee for any relief which includes or might result in any modification of the obligations of the Vendee hereunder or the Lessee under the Lease or under the Consent under any bankruptcy or insolvency laws or laws relating to the relief of debtors, readjustment of indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit any readjustment of such obligations), and, unless such proceedings shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all such obligations shall not have been and shall not continue to be duly assumed in writing within 60 days after such proceedings shall have been commenced, pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed (whether or not subject to ratification) for the Vendee or the Lessee, as the case may be, or for their respective property in connection with any such proceedings in such manner that such obligations shall have the same status as expenses of administration and obligations incurred by such trustee or trustees or receiver or receivers; or
- (e) the Vendee shall make or permit any unauthorized assignment or transfer of this Agreement or any interest herein or any unauthorized transfer of the right to possession or use of any unit of the Equipment and the Vendee shall, for more than 30 days after demand in writing by the Vendor, fail to secure a reassignment or retransfer to the Vendee of such Agreement, interest or right; or
- (f) an Event of Default shall have occurred and be continuing under the Lease (other than an Event of Default relating to Excluded Payments) unless the Vendee shall have cured such Event of Default and the corresponding event of default hereunder within the later to occur of (1) the expiration of all applicable grace periods, or (2) the tenth business day following

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the giving of written notice to the Vendee that such Event of Default has occurred and is continuing; provided, however, that if more than four Events of Default or if more than two consecutive Events of Default shall have occurred under clause (A) of § 10.1 of the Lease which corresponds to an event of default under Section 15 (a) hereof, any such Event of Default shall be an event of default hereunder whether or not the corresponding event of default hereunder is cured;

then at any time after the occurrence of such an event of default and so long as such event of default is continuing the Vendor may, upon written notice to the Vendee and the Lessee and upon compliance with any legal requirements then in force and applicable to such action by the Vendor, declare (herein called a "Declaration of Default") the entire unpaid CSA Indebtedness, together with the interest thereon then accrued and unpaid, immediately due and payable, without further demand, and thereafter the aggregate of the unpaid balance of the CSA Indebtedness and interest shall bear interest from the date of such . Declaration of Default at the Overdue Rate, to the extent legally enforceable. In addition, if the Vendee does not pay the entire unpaid CSA Indebtedness, together with the interest thereon accrued and unpaid to the date of payment with 15 days of such notice of Declaration of Default, the Vendor may, subject to the Lessee's rights of possession, use and assignment under §§ 4 and 12 of the Lease, cause the term of the Lease immediately upon such notice to terminate. Such termination shall not be in derogation of or impair the rights of the Vendee or the Agent (under the assignment thereof), as the case may be, to enforce compliance by the Lessee with any of its covenants and agreements under the Lease or to enforce any of its rights and remedies under § 10 of the Lease (subject to the Agent's rights to repossess and sell the Equipment as provided in this Agreement), including the rights of the Vendee or the Agent (under the assignment thereof), as the case may be, to sue for and recover damages provided for in § 10 of the Lease upon the occurrence of an Event of Default under the Lease. Upon a Declaration of Default, subject to Article 4 hereof, the Vendor shall be entitled to recover judgment for the entire unpaid balance of the CSA Indebtedness so payable, with interest as aforesaid, subject to the provisions of Articles 4 and 21 hereof, and to collect such judgment out of the "income and proceeds of the Equipment" wherever situated.

The Vendor may, at its election, waive any such event of default hereunder and its consequences and rescind

and annul any Declaration of Default or notice of termination of the Lease by notice to the Vendee and the Lessee in writing to that effect, and thereupon the respective rights of the parties shall be as they would have been if no such event of default had occurred and no Declaration of Default or notice of termination of the Lease had been made or given. Notwithstanding the provisions of this paragraph, it is expressly agreed by the Vendee that time is of the essence of this Agreement and that no such waiver, rescission or annulment shall extend to or affect any other or subsequent default or impair any rights or remedies consequent thereon.

Remedies. Subject to the Lessee's ARTICLE 16. rights of possession, use and assignment under §§ 4 and 12 of the Lease, at any time during the continuance of a Declaration of Default, the Vendor may, and upon such further notice, if any, as may be required for compliance with any mandatory legal requirements then in force and applicable to the action to be taken by the Vendor, take or cause to be taken, by its agent or agents, immediate possession of the Equipment, or any portion thereof, without liability to return to the Vendee any sums theretofore paid and free from all claims whatsoever, except as hereinafter in this Article 16 expressly provided, and may remove the same from possession and use of the Vendee or any other person and for such purpose may enter upon the premises of the Vendee or any other premises where the Equipment may be located and may use and employ in connection with such removal any supplies, services and aids and any available trackage and other facilities or means of the Vendee, subject to all mandatory requirements of due process of law.

In case the Vendor shall demand possession of the Equipment pursuant to this Agreement and shall designate a reasonable point or points for the delivery of the Equipment to the Vendor, the Vendee shall, at its own expense and risk:

(a) forthwith and in the usual manner (including but not by way of limitation, giving prompt telegraphic and written notice to the Association of American Railroads and all railroads to which any units of Equipment have been interchanged or which may have possession thereof to return such unit so interchanged) cause the Equipment to be placed upon such storage tracks at such site or sites as the Vendor may reasonably designate; and

(b) permit the Vendor to store the Equipment on such tracks at the risk of the Vendee without charge for insurance, rent or storage until the Equipment has been sold, leased or otherwise disposed of by the Vendor; and

During any storage period referred to in clauses (a) and (b), above, the Vendee will, at its own cost and expense, insure (to the same extent as provided in § 7.6 of the Lease), maintain and keep each such unit in good order and repair (to the same extent as provided in the first paragraph of Article 7 hereof) and will permit the inspection of the Equipment by the Vendor, the Vendor's representatives and prospective purchasers, lessees and users. agreement to deliver the Equipment and furnish facilities as hereinbefore provided is of the essence of the agreement between the parties, and, upon application to any court of equity having jurisdiction, the Vendor shall be entitled to a decree against the Vendee requiring specific performance The Vendee hereby expressly waives any and all claims against the Vendor and its agent or agents for damages of whatever nature in connection with any retaking of any unit of the Equipment in any reasonable manner.

At any time during the continuance of a Declaration of Default, the Vendor (after retaking possession of the Equipment as hereinbefore in this Article 16 provided) may, at its election and upon such notice as is hereinafter set forth, retain the Equipment in satisfaction of the entire CSA Indebtedness and make such disposition thereof as the Vendor shall deem fit. Written notice of the Vendor's election to retain the Equipment shall be given to the Vendee and the Lessee by telegram or registered mail, and to any other persons to whom the law may require notice, within 30 days after such Declaration of Default. In the event that the Vendor should elect to retain the Equipment and no objection is made thereto within the 30-day period described in the second proviso below, all the Vendee's rights to the Equipment shall thereupon terminate and all payments made by the Vendee or for its account may be retained by the Vendor as compensation for the use of the Equipment; provided, however, that if the Vendee, before the expiration of the 30-day period described in the proviso below, should pay or cause to be paid to the Vendor the total unpaid balance of the CSA Indebtedness, together with interest thereon accrued and unpaid and all other payments due under this Agreement, then in such event absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Vendee; provided further, however, that if the

Vendee, the Lessee or any other persons notified under the terms of this paragraph object in writing to the Vendor within 30 days from the receipt of notice of the Vendor's election to retain the Equipment, then the Vendor may not so retain the Equipment, but shall sell, lease or otherwise dispose of it or continue to hold it pending sale, lease or other disposition as hereinafter provided or as may otherwise be permitted by law. If the Vendor shall not have given notice to retain as hereinabove provided or notice of intention to dispose of the Equipment in any other manner, it shall be deemed to have elected to sell the Equipment in accordance with the provisions of this Article 16.

Subject to the Lessee's rights of possession, use and assignment under §§ 4 and 12 of the Lease, at any time during the continuance of a Declaration of Default, the Vendor, with or without retaking possession thereof, at its election and upon reasonable notice to the Vendee, the Lessee and any other persons to whom the law may require notice of the time and place, may sell the Equipment, or one or more of the units thereof, free from any and all claims of the Vendee, the Lessee or any other party claiming from, through or under the Vendee or the Lessee, at law or in equity, at public or private sale and with or without advertisement as the Vendor may determine; provided, however, that if, prior to such sale and prior to the making of a contract for such sale, the Vendee should tender full payment of the total unpaid balance of the CSA Indebtedness, together with interest thereon accrued and unpaid and all other payments due under this Agreement as well as expenses of the Vendor in retaking possession of, removing, storing, holding and preparing the Equipment for, and otherwise arranging for, the sale and the Vendor's reasonable attorneys' fees, then upon receipt of such payment, expenses and fees by the Vendor, absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Vendee. The proceeds of such sale or other disposition, less the attorneys' fees and any other expenses incurred by the Vendor in retaking possession of, removing, storing, holding, preparing for sale and selling or otherwise disposing of the Equipment shall be credited on the amount due to the Vendor under the provisions of this Agreement.

Any sale hereunder may be held or conducted at New York, New York at such time or times as the Vendor may specify (unless the Vendor shall specify a different place or places, in which case the sale shall be held at such place or places as the Vendor may specify), in one lot and

as an entirety or in separate lots and without the necessity of gathering at the place of sale the property to be sold, and in general in such manner as the Vendor may determine, so long as such sale shall be in a commercially reasonable The Vendor or the Vendee may bid for and become the purchaser of the Equipment, or any unit thereof, so offered The Vendee shall be given written notice of such sale or the making of a contract for such sale not less than 10 business days prior thereto, by telegram or registered If such sale shall be a private sale, (which shall be deemed to mean only a sale where an advertisement for bids has not been published in a newspaper of general circulation or a sale where fewer than 40 offerees have been solicited in writing to submit bids), it shall be subject to the rights of the Vendee to purchase or provide a purchaser, within 10 days after notice of the proposed sale price, at the same price offered by the intending purchaser or a better price. In the event that the Vendor shall be the purchaser of the Equipment, it shall not be accountable to the Vendee or the Lessee (except to the extent of surplus money received as hereinafter provided in this Article 16), and in payment of the purchase price therefor the Vendor shall be entitled to have credited on account thereof all or any part of sums due to the Vendor hereunder.

Each and every power and remedy hereby specifically given to the Vendor shall be in addition to every other power and remedy hereby specifically given or now or hereafter existing at law or in equity, and may be exercised from time to time and simultaneously and as often and in such order as may be deemed expedient by the Vendor. All such powers and remedies shall be cumulative, and the exercise of one shall not be deemed a waiver of the right to exercise any other or others. No delay or omission of the Vendor in the exercise of any such power or remedy and no renewal or extension of any payments due hereunder shall impair any such power or remedy or shall be construed to be a waiver of any default or an acquiescence therein. extension of time for payment hereunder or other indulgence granted to the Vendee or the Lessee shall not otherwise alter or affect the Vendor's rights or the Vendee's obligations hereunder. The Vendor's acceptance of any payment after it shall have become due shall not be deemed to alter or affect the Vendee's obligations or the Vendor's rights hereunder with respect to any subsequent payments or default therein.

If, after applying all sums of money realized by the Vendor under the remedies herein provided, there shall

remain any amount due to it under the provisions of this Agreement, the Vendee shall pay the amount of such deficiency to the Vendor upon demand, together with interest thereon from the date of such demand to the date of payment at the Overdue Rate and, if the Vendee shall fail to pay such deficiency, the Vendor may bring suit therefor and shall, subject to the limitations of the last paragraph of Article 4 hereof, be entitled to recover a judgment therefor against the Vendee. If, after applying as aforesaid all sums realized by the Vendor, there shall remain a surplus in the possession of the Vendor, such surplus shall be paid to the Vendee.

Subject to the limitations of the last paragraph of Article 4 hereof, the Vendee will pay all reasonable expenses, including attorney's fees, incurred by the Vendor in enforcing its remedies under the terms of this Agreement. In the event that the Vendor shall bring any suit to enforce any of its rights hereunder and shall be entitled to judgment, then in such suit the Vendor may recover reasonable expenses, including reasonable attorneys' fees, and the amount thereof shall be included in such judgment.

The foregoing provisions of this Article 16 are subject in all respects to all mandatory legal requirements at the time in force and applicable thereto.

ARTICLE 17. Applicable State Laws. Any provision of this Agreement prohibited by any applicable law of any jurisdiction shall as to such jurisdiction be ineffective, without modifying the remaining provisions of this Agreement. Where, however, the conflicting provisions of any such applicable law may be waived, they are hereby waived by the Vendee to the full extent permitted by law, it being the intention of the parties hereto that this Agreement shall be deemed to be a conditional sale and enforced as such.

Except as otherwise provided in this Agreement, the Vendee, to the full extent permitted by law, hereby waives all statutory or other legal requirements for any notice of any kind, notice of intention to take possession of or to sell or lease the Equipment, and and other requirements as to the time, place and terms of the sale or lease thereof, any other requirements with respect to the enforcement of the Vendor's rights under this Agreement and any and all rights of redemption.

ARTICLE 18. Filing. The Vendee will cause this Agreement, any assignments hereof and any amendments or

supplements hereto or thereto, to be filed in accordance with 49 U.S.C. § 11303; and the Vendee will from time to time do and perform any other act and will execute, acknowledge, deliver, file, register, deposit and record any and all further instruments required by law or reasonably requested by the Vendor for the purpose of proper protection, to the satisfaction of counsel for the Vendor, of its interest in the Equipment and its rights under this Agreement or for the purpose of carrying out the intention of this Agreement; and the Vendee will promptly furnish to the Vendor certificates or other evidence of such filing, registering, depositing and recording satisfactory to the Vendor.

ARTICLE 19. Article Headings; Effect and Modification of Agreement. All article headings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

Except for the Participation Agreement, this Agreement, including the Annexes hereto, exclusively and completely states the rights of the Vendor and the Vendee with respect to the Equipment and supersedes all other agreements, oral or written, with respect to the Equipment. No variation or modification of this Agreement and no waiver of any of its provisions or conditions shall be valid unless in writing and signed by duly authorized representatives of the Vendor and the Vendee.

ARTICLE 20. Notice. Any notice required or permitted hereunder shall be deemed to have been received by the addressee on the date of actual receipt (if such date is a business day, otherwise on the next business day), if transmitted by mail, telex, telecopy or similar transmission, or by hand, addressed as follows:

- (a) to the Lessee, at 2000 Second Avenue, Detroit, Michigan 48226, Attention of Secretary,
- (b) to the Builder at its address specified in Item 1 of Annex A hereto,
- (c) to the Assignee, at its address at P. O. Box 2258, 2 Hopkins Plaza, Baltimore, Maryland 21203, Attention of Corporate Trust Department,
- (d) to the Vendee at its address set forth on the signature page of the Participation Agreement,

(e) to any assignee of the Vendor or Assignee, or of the Vendee, at such address as may have been furnished in writing to the Vendee, or the Vendor or the Assignee, as the case may be, and to the Lessee, by such assignee.

or at such other address as may have been furnished in writing by such party to the other parties referred to above.

ARTICLE 21. Satisfaction of Undertakings. The obligations of the Vendee under the second paragraph of Article 16 (including the provisions thereof with respect to insurance, maintenance and repair) and under Articles 3, 6, 7 (other than the third and fourth sentences of the second paragraph thereof), 8, 9, 10, 12 (other than the proviso to the last paragraph thereof), 13 and 18 hereof shall be deemed in all respects satisfied by the Lessee's undertakings contained in the Lease. The Vendee shall not have any responsibility for the Lessee's failure to perform such obligations, but if the same shall not be performed they shall constitute the basis for an event of default pursuant to Article 15 (a) or (b) hereof.

ARTICLE 22. Law Governing. The Vendee warrants that its chief place of business is located in the State of New York and agrees to notify all other parties hereto in writing if it proposes to change such chief place of business, such notice to specify the proposed new place. terms of this Agreement and all rights and obligations hereunder shall be governed by the laws of the State of New York; provided, however, that the parties shall be entitled to all rights conferred by 49 U.S.C. § 11303 and such additional rights arising out of the filing or recording hereof, if any, and of any assignment hereof as shall be conferred by the laws of the several jurisdictions in which this Agreement or any assignment hereof shall be filed or recorded. The parties hereto hereby irrevocably consent to the jurisdiction of any federal or state court sitting in the City and State of New York in respect to any claim or dispute arising hereunder.

ARTICLE 23. Execution. This Agreement may be executed in any number of counterparts, such counterparts together constituting but one and the same contract, but the counterpart delivered to the Assignee pursuant to the CSA Agreement shall be deemed the original and all other counterparts shall be deemed duplicates thereof. Although for convenience this Agreement is dated as of the date first

above written, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgements hereto annexed.

ARTICLE 24. Payments to the Vendee. If (a) pursuant to the reorganization provisions of the Bankruptcy Reform Act of 1978, as amended, or any successor provision, the Vendee is required, by reason of the Vendee being held to have recourse liability to the debtor directly or indirectly, to make payment on account of any amount payable as principal or interest on the CSA Indebtedness, and (b) any such holder of CSA Indebtedness actually receives any Excess Amount which reflects any payment by the Vendee on account of (a) above, then such holder shall promptly refund to the Vendee such Excess Amount. For purposes of this Article 24, "Excess Amount" means the amount by which such payment exceeds the amount which would have been received by such holder if the Vendee had not become subject to the recourse liability referred to in (a) It is the intention of the parties hereto that the Vendee shall not have any recourse liability in respect of the CSA Indebtedness.

IN WITNESS WHEREOF, the parties hereto have executed or caused this instrument to be executed all as of the date first above written.

GREENVILLE STEEL CAR COMPANY,

[Corporate Seal]

by

Title:

Attest:

Attesting Secretary

THE BANK OF NEW YORK,

by

Vice President

STATE OF PENNSYLVANIA,)

OUNTY OF MERCER

)

On this day of October 1985, before me personally appeared , to me personally known, who, being by me duly sworn, says that he is a of GREENVILLE STEEL CAR COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, and that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Notary Public

My Commission Expires

[Notarial Seal]

STATE OF NEW YORK,)

OUNTY OF NEW YORK,)

On this 17th day of October 1985, before me personally appeared Deborah Perking, to me personally known, who, being by me duly sworn, says that she is a Vice President of THE BANK OF NEW YORK, that said instrument was signed on behalf of said bank by authority of its Board of Directors, and she acknowledged that the execution of the foregoing instrument was the free act and deed of said bank.

Notary Public

My Commission Expires

[Notarial Seal]

KATHLEEN A. COONEY Notary Public, State of New York No. 43-4817439 Qualified in Richmond County Commission Expires March 20, 1925

Merch 30, 1986 C-30

SCHEDULE I
Allocation of each \$1,000,000 of 11.67% CSA Indebtedness

				•
Payment	Debt		Principal	Outstanding
Date	<u>Service</u>	<u> Interest</u>	Repayment	Balance
7/2/86	*	*	0.00	1,000,000.00
1/2/87	58,350.00	58,350.00	0.00	1,000,000.00
7/2/87	95,572.85	58,350.00	37,222.85	962,777.15
1/2/88	56,178.05	56,178.05	0.00	962,777.15
7/2/88	97,744.81	56,178.05	41,566.76	921,210.39
1/2/89	53,752.63	53,752.63	0.00	921,210.39
7/2/89	100,170.23	53,752.63	46,417.60	874,792.78
1/2/90	51,044.16	51,044.16	0.00	874,792.79
7/2/90	102,878.69		51,834.54	822,958.25
1/2/91	48,019.61	48,019.61	0.00	822,958.25
7/2/91	91,706.02	48,019.61	43,686.41	779,271.84
1/2/92	45,470.51	45,470.51	0.00	779,271.84
7/2/92	86,046.61	45,470.51	40,576.09	738,695.75
1/2/93	43,102.90	43,102.90	0.00	738,695.75
	84,223.5	43,102.90	41,120.69	697,575.06
7/2/93	40 702 50	40,702.50	0.00	697,575.06
1/2/94	40,703.50	40,703.50		629,713.30 (2)
7/2/94	108,565.27	40,703.50	67,861.77	
1/2/95	36,743.77	36,743.77	0.00	629,713.30
7/2/95	97,331.78	36,743.77	60,588.01	569,125.28
1/2/96	33,208.46	33,208.46	0.00	569,125.28
7/2/96	95,266.61	33,208.46	62,058.15	507,067.13
1/2/97	29,587.37	29,587.37	0.00	507,067.13
7/2/97	93,502.69	29,587.37	63,915.32	443,151.81
1/2/98	25,857.91	25,857.91	0.00	443,151.81
7/2/98	126,797.02	25,857.91	100,939.12	342,212.69
1/2/99	19,968.11	19,968.11	0.00	342,212.69
7/2/99	168,159.82	19,968.11	148,191.71	194,020.98
1/2/00	11,321.12	11,321.12	0.00	194,020.98
7/2/00	176,806.8 1	11,321.12	165,485.68	28,535.30
1/2/01	1,665.03	1,665.03	0.00	28,535.30
7/2/01	30,200.33	1,665.03	28,535.30	0.00
1/2/01	30,200.33	2,000.00	20,000100	
TOTALS	2,109,946.27	1,109,946.27	1,000,000.00	

^{*} Interest only shall be payable to the extent accrued to this date.

SCHEDULE I
Allocation of each \$1,000,000 of 11.67% CSA Indebtedness

\				
Payment	Debt	*	Principal	Outstanding
Date	Service	Interest	Repayment,	
			repayment	·
7/2/86	*	*	9.00	1,000,000.00
1/2/87	58,350.00	58,350.00	0.00	1,000,000.00
7/2/87	95,572.85	58,350.00	37/,222.85	962,777.15
1/2/88	56,178.05	56,178.05	0.00	962,777.15
7/2/88	97,744.81	56,178.05	41,566.76	921,210.39
1/2/89	53,752.63	53,752.63/	0.00	921,210.39
7./2/89	100,170.23	53,752.63	46,417.60	874,792.78
1/2/90	51,044.16	51,044,16	0.00	874,792.78
7/2/90	102,878.69	51,044.16	51,834.54	822,958.25
1/2/91	48,019.61	48,019.61	0.00	822,958.25
7/2/91	91,708.02	48,019.61	43,686.41	779,271.84
1/2/92	45,470.51	45,470.51	0.00	779,271.84
7/2/92	86,046.61	/45,470.51	40,576.09	738,695.75
1/2/93	43,102.90	43,102.90	0.00	738,695.75
7/2/93	84,223.58	43,102.90	41,120.69	697,575.06
1/2/94	40,703.50	40,703.50	0.00	697,575.06
7/2/94	108,565.27	40,703.50	67,861.77	629,713.30
1/2/95	36,743/77	\36 , 743.77	0.00	629,713.30
7/2/95	9/,33/(./8	36,743.77	60,588.01	569,125.28
1/2/96	33,2ø8.46	33,208.46	0.00	569,125.28
7/2/96	95 , £66.61	33,208.46	62,058.15	507,067.13
1/2/97	29/,587.37	$29 \lambda 587.37$	0.00	507,067.13
7/2/97	93,502.69	29,587.37	63,915.32	443,151.81
1/2/98	25,857.91	25,857.91	0.00	443,151.81
7/2/98	1/26,797.02	25,857.91	100,939.12	342,212.69
1/2/99	/19,968.11	19,968,11	0.00	342,212.69
7/2/99	/168,159.82	19,968,11	148,191.71	194,020.98
1/2/00	/ 11,321.12	11,321.\2	0.00	194,020.98
7/2/00	/ 176,806.81	11,321.12	165,485.68	28,535.30
1/2/01 /	1,665.03	1,665.03	0.00	28,535.30
7/2/01/	30,200.33	1,665.03	28,535.30	0.00
	• • • •			, , -
TOTALS	2,109,946.27 1,	109,946.27	1,000,000.00	
/	•	•	•	
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^{*} Interest only shall be payable to the extent accrued to this date.

- Item 1: Greenville Steel Car Company, a Pennsylvania corporation with an address at Union Street, Greenville, Pennsylvania 16125, attention of Vice President-Finance.
- Item 2: The Equipment shall be settled for in such number of Groups of units delivered to and accepted by the Vendee as shall be agreed to by the parties hereto.
- Item 3: The Builder warrants that the Equipment will be built in accordance with the requirements, specifications and standards set forth in Article 2 of the CSA to which this Annex A is attached (the "Agreement") and warrants the Equipment will be free from defects in material (except as to specialties incorporated therein which were specified or supplied by the Lessee and not manufactured by the Builder) and workmanship and design (except as to designs specified by the Lessee and not developed by the Builder) under normal use and service, the Builder's obligations under this Item 3 being limited to making good at its plant any part or parts of any unit of the Equipment which shall, within two years (or 50,000) miles, whichever first occurs, after delivery of such unit of Equipment to the Lessee, be returned to the Builder with transportation charges prepaid and which the Builder's examination shall disclose to its satisfaction to have been thus In no event shall the Builder be liable to anyone for any incidental, special or consequential damages. The foregoing warranty of the Builder is expressly in lieu of all other warranties, express or implied, including any implied warranty of merchantability or fitness for a particular purpose, except for its obligations or liabilities under Articles 2, 3, 4 and 13 of the Agreement, and the Builder neither assumes nor authorizes any person to assume for it any other liability in connection with the construction and delivery of the Equipment, except as aforesaid.

The Builder further agrees with the Vendee and the Lessee that neither the inspection as provided in Article 3 of this Agreement nor the acceptance of any units of the Equipment as provided in said

Article 3 shall be deemed a waiver or a modification by the Vendee and the Lessee of any of their rights under this Item 3.

Item 4:

The Builder agrees to indemnify, protect and hold harmless the Vendee and the Lessee from and against any and all liability, claims, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Vendee, its assigns or the Lessee because of the use in or about the construction or operation of any of the Equipment of any design, system, process, formula, combination, article or material which infringes or is claimed to infringe on any patent or other right. Lessee, as a condition to its being a third party beneficiary hereof, likewise will indemnify, protect and hold harmless the Builder from and against any and all liability, claims, demands, costs, charges and expenses, including royalty payments and reasonable attorney's fees, in any manner imposed upon or accruing against the Builder because of the use in or about the construction or operation of the Equipment, or any unit thereof, of any design, process or combination specified by the Lessee and not developed or purported to be developed by such Builder, or article or material specified by the Lessee, which infringes or is claimed to infringe on any patent The Builder agrees to and hereby or other right. does, to the extent legally possible without impairing any claim, right or cause of action hereinafter referred to, assign, set over and deliver to the Vendee every claim, right and cause of action which the Builder has or hereafter shall have against the seller or sellers of any designs, systems, processes, formulae, combinations, articles or materials specified by the Lessee and purchased or otherwise acquired by the Builder for use in or about the construction or operation of any of the Equipment, on the ground that any such design, system, process, formula, combination, article or material or operation thereof infringes or is claimed to infringe on any patent or other right and the Builder further agrees to execute and deliver to the Vendee all and every such further assurances as may be reasonably requested by the Vendee more fully to effectuate the assignment, transfer and delivery of every such claim,

right and cause of action. The Lessee, as a condition to its being a third party beneficiary hereof, will give notice to the Builder of any claim known to the Lessee on the basis of which liability may be charged against the Builder hereunder and the Builder will give notice to the Lessee and the Vendee of any claim known to the Builder, on the basis of which liability may be charged against the Lessee or the Vendee hereunder. Such covenants of indemnity shall continue in full force and effect notwithstanding the full payment of all sums due under this Agreement, the satisfaction and discharge of this Agreement or the termination of this Agreement in any manner.

- Item 5: The Maximum Purchase Price referred to in Article 4 of the Agreement is \$24,300,000.
- Item 6: The Maximum CSA Indebtedness referred to in Article 4 of the Agreement is \$13,400,000.

Annex B to Conditional Sale Agreement

Estimated Time and Place of Delivery	Oct-Dec, 1985, at Builder's Plant.
Total Base <u>Price</u>	\$38,651.88 \$23,577,646.80
Unit Base Price	\$38,651.88
Lessee's Identification Numbers (Both Inclusive)	DEEX 8101- 8710
Quantity	610
Builder's Plant	Greenville, Pennsylvania
Type	108 Ton, 4,320 cu. ft. Aluminum bodied-steel underframed, rotary dump, gondola rail cars
Builder	Greenville Steel Car Company

[CS&M Ref. 1696-046]

LEASE OF RAILROAD EQUIPMENT

Dated as of October 1, 1985

between

THE DETROIT EDISON COMPANY, Lessee

and

THE BANK OF NEW YORK, Lessor

[Covering 610 Greenville Rotary Dump Gondola Cars]

The rights and interests of the Lessor under this Lease are subject to a security interest in favor of Mercantile-Safe Deposit and Trust Company, as agent for a certain investor. The original of this Lease is held by said Agent.

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^{*} This Table of Contents has been included in this document for convenience only and does not form a part or affect any construction or interpretation of this document.

LEASE OF RAILROAD EQUIPMENT dated as of October 1, 1985, between THE DETROIT EDISON COMPANY, a Michigan corporation (the "Lessee"), and THE BANK OF NEW YORK, a New York corporation (the "Lessor").

WHEREAS the Lessor is entering into a Conditional Sale Agreement dated as of the date hereof (the "CSA") with Greenville Steel Car Company (the "Builder"), pursuant to such the Builder has agreed to manufacture, conditionally sell and deliver to the Lessor the units of railroad equipment described in Schedule A hereto (the "Equipment");

WHEREAS the Builder under an Agreement and Assignment dated as of the date hereof (the "CSA Assignment") is assigning its interests in the CSA to Mercantile-Safe Deposit and Trust Company acting as Agent (hereinafter, together with its successors and assigns and the Investor, as hereinafter defined, called the "Vendor") under a Participation Agreement dated as of the date hereof (the "Participation Agreement") with the Lessee, the Lessor and the Investor named therein (said investor, together with its successors and assigns, being hereinafter called the "Investor");

WHEREAS the Lessee desires to lease such number of units of Equipment as are delivered and accepted and settled for under the CSA (the "Units") at the rentals and for the terms and upon the conditions hereinafter provided; and

WHEREAS the parties contemplate that the Lessor will assign for security purposes certain of its rights in this Lease to the Vendor by an Assignment of Lease and Agreement dated as of the date hereof (the "Lease Assignment"), and the Lessee will consent thereto by a Consent and Agreement (the "Consent");

NOW, THEREFORE, in consideration of the premises and of the rentals to be paid and the covenants hereinafter mentioned to be kept and performed by the Lessee, the Lessor hereby leases the Units to the Lessee upon the following terms and conditions:

§ 1. NET LEASE

This Lease is a net lease and the Lessee shall not be entitled to any abatement of rent or additional rent or any other amounts payable by it hereunder (all such rent, additional rent and other amounts are referred to collectively in this § 1 as "Rent"), or setoff against or recoupment or reduction of Rent, including, but not limited to, abatements, setoffs, reductions or recoupments due or alleged to be due by reason of any past, present or future claims or counterclaims of the Lessee against the Lessor under this Lease or the CSA or otherwise, or against the builder or the Vendor or any other person or for any other The Lessee's obligations hereunder, reason whatsoever. including its obligations to pay all Rent, shall be absolute and unconditional under any and all circumstances, and except as otherwise expressly provided herein, this Lease shall not terminate, nor shall the respective obligations of the Lessor or the Lessee be otherwise affected, by reason of any defect in or damage to or loss of possession or loss of use or destruction of all or any of the Units from whatsoever cause, any liens, encumbrances or rights of others with respect to any of the Units, the prohibition of or other restriction against the Lessee's use of all or any of the Units, the interference with such use by any person, the invalidity or unenforceability or lack of due authorization of this Lease, any insolvency of or any bankruptcy, reorganization or similar proceeding against the Lessee, or for any other cause whether similar or dissimilar to the foregoing, any present or future law to the contrary notwithstanding, it being the intention of the parties hereto that all Rent payable by the Lessee hereunder shall continue to be payable in all events in the manner and at the times herein provided unless the obligation to pay the same shall be terminated pursuant to the express provisions of this Lease. To the extent permitted by applicable law, the Lessee hereby waives any and all rights which it may now have or which at any time hereafter may be conferred upon it, by statute or otherwise, to terminate, cancel, quit or surrender the lease of any of the Units except in accordance with the express terms hereof. Each payment of Rent made by the Lessee hereunder shall be final and the Lessee shall not seek to recover all or any part of such payment from the Lessor for any reason whatsoever except manifest error.

§ 2. DELIVERY AND ACCEPTANCE OF UNITS

The Lessor hereby appoints the Lessee its agent for inspection and acceptance of the Units pursuant to the CSA. The Lessor will cause each Unit to be delivered to the Lessee at the point or points within the United States of America at which such Unit is delivered to the Lessor under the CSA. Upon such delivery, the Lessee will cause an employee of the Lessee to inspect the same and, if such Unit is found to be acceptable, to accept delivery of such Unit, and the Lessee shall execute and deliver to the Lessor a certificate of acceptance ("Certificate of Acceptance") substantially in the form annexed hereto as Schedule D, whereupon, except as provided in the next sentence hereof, such Unit shall be deemed to have been delivered to and accepted by the Lessee and shall be subject thereafter to all the terms and conditions of this Lease. The delivery, inspection and acceptance hereunder of any unit of Equipment excluded from the CSA pursuant to the first paragraph of Article 4 thereof shall be null and void and ineffective to subject such unit to this Lease or to constitute acceptance thereof on behalf of the Lessor for any purpose whatsoever.

§ 3. RENTALS

- The Lessee agrees to pay the Lessor, as rental for each Unit subject to this Lease, 32 consecutive payments, payable in arrears, commencing January 2, 1987, to and including July 2, 2002. The 32 rental payments shall each be in an amount equal to the basic lease rate set forth in Schedule B hereto for the applicable payment date multiplied by the Purchase Price (as defined in Article 4 of the CSA) of each Unit subject to this Lease. In addition, if the Vendee shall fail to pay to the Agent on July 2, 1986, an amount equal to interest accrued to said date on the CSA Indebtedness as required by the first sentence of Paragraph 10 of the Participation Agreement, the Lessee shall on July 2, 1986, pay to the Agent an amount equal to said accrued interest, in which event the Lessee shall have a right to sue the Vendee for the amount so paid to the Agent plus interest thereon at the Prime Rate (as defined in § 16 hereof) plus 1% per annum until repaid or withhold an amount equal to the same plus such interest thereon from rentals hereunder but only to the extent such withholdings are not required to satisfy the obligations of the Vendee under the CSA.
- (2) The basic lease rates set forth in Schedule B hereto and the related Casualty Values and Termination

Values set forth in Schedule C hereto have been calculated on the assumptions that the Units will have been delivered and settled for by the Lessor and the Agent on the dates and in the amounts as follows:

Number of Units	Assumed Delivery Date	Assumed Settlement Date	Assumed Settlement Amount
200	October 1985	10/30/85	\$7,760,000
205	November 1985	11/30/85	7,954,000
205	December 1985	12/30/85	7,954,000
			\$23,668,000

If for any reason such assumptions are not correct, then such basic lease rates and such Casualty values and Termination Values payable by the Lessee hereunder in respect of the Units on and after January 2, 1987, shall be increased or decreased, as the case may be, by such amount as shall, in the reasonable opinion of the Lessor, cause the Lessor's nominal after-tax yield and net after-tax cash flows as were originally anticipated by the Lessor in evaluating this transaction (such yield and cash flow being hereinafter called "Net Economic Return") to be the same as if such assumptions had been correct. The Lessor shall provide a schedule of such rentals and Casualty Values to the Lessee and the Agent promptly after the facts have been determined and the calculations have been made by the Lessor. Lessee so requests, such calculations will, at the expense of the Lessee, be verified by the Lessor's independent auditors and the determination of such auditors shall be binding on the parties hereto.

Notwithstanding anything to the contrary set forth herein, the rentals and Casualty Value and Termination percentages, as adjusted pursuant to this § 3, shall always be sufficient to satisfy the obligations of the Lessor under the CSA regardless of any limitation of liability set forth therein and the date on which rental is payable shall in any event be consistent with the Lessor's payment obligations under the CSA.

If any of the rental payment dates referred to above is not a business day the rental payment otherwise payable on such date shall be payable on the next preceding business day. The term "business day" as used herein means a calendar day, excluding Saturdays, Sundays and any other day on which banking institutions in New York City, New York, Detroit, Michigan, or Baltimore, Maryland, are authorized or obligated to remain closed.

The Lessor irrevocably instructs the Lessee to make all the payments provided for in this Lease, including, but not limited to, the payments provided for in this § 3 and in § 7 hereof, but excluding all Excluded Payments as defined in the Lease Assignment, at the principal office of the Vendor, for the account of the Lessor in care of the Vendor, with instructions to the Vendor, first, to apply such payments to satisfy the obligations of the Lessor under the CSA, and, second, so long as no event of default under the CSA shall have occurred and be continuing, to pay any balance promptly to the Lessor at such place as the Lessor shall specify in writing. If the Lease Assignment is not executed and delivered, or if the Lessee shall have been advised by the Agent in writing that all sums due from the Vendee under the CSA have been fully discharged and satisfied, payments thereafter due shall be made to the The Lessee agrees to make each payment provided for Lessor. herein as contemplated by this paragraph by wire transfer of immediately available funds to the Vendor or the Lessor, as the case may be, by 11:00 a.m., New York City time, on the date such payment is due.

§ 4. TERM OF LEASE

- 4.1. <u>Beginning and Termination</u>. The term of this Lease as to each Unit shall begin on the date of delivery and acceptance of such Unit hereunder and, subject to the provisions of §§ 7, 10 and 13 hereof, shall terminate on the date on which the final payment of rent in respect thereof is due pursuant to § 3.1 hereof. The obligations of the Lessee hereunder (including, but not limited to, the obligations under §§ 3, 6, 7, 9 and 14 hereof) shall survive the expiration or termination of the term of this Lease.
- 4.2. Rights and Obligations of Lessee Subject to CSA. Notwithstanding anything to the contrary contained herein, all rights and obligations of the Lessee under this Lease and in and to the Units are subject to the rights of the Vendor under the CSA. If an event of default should occur under the CSA, the Vendor may terminate this Lease (or rescind its termination), all as provided therein; provided, however, that, so long as (i) no Event of Default exists hereunder, (ii) the Lessee is complying with the provisions of the Consent and (iii) the Vendor is entitled to apply the Payments (as defined in the Lease Assignment) in accordance with the Lease Assignment, this Lease may not be terminated and the Lessee shall be entitled to the rights of possession, use and assignment provided under § 12 hereof.

§ 5. IDENTIFICATION MARKS

- Identifying Numbers; Legend, Changes. Lessee will cause each Unit to be kept numbered with the identification number set forth in Schedule A hereto, and will keep and maintain, plainly, distinctly, permanently and conspicuously marked on each side of each Unit, in letters not less than one inch in height, the words "OWNERSHIP SUBJECT TO A SECURITY AGREEMENT FILED WITH THE INTERSTATE COMMERCE COMMISSION", with appropriate changes thereof as from time to time may be required by law, in the opinion of the Vendor and the Lessor, in order to protect the Lessor's and the Vendor's title to and interest in such Unit and the rights of the Lessor under this Lease and the rights of the Vendor under the CSA. The Lessee will not place any such Unit in operation or exercise any control or dominion over the same until such words shall have been so marked and will replace promptly any such markings which may be removed, obliterated, defaced or destroyed. The Lessee will not change the identification number of any Unit unless and until (i) a statement of new number or numbers to be substituted therefor shall have been filed with the Vendor and the Lessor and duly filed and deposited by the Lessee in all public offices where this Lease and the CSA shall have been filed and deposited and (ii) the Lessee shall have furnished the Vendor and the Lessor an opinion of counsel to the effect that such statement has been so filed and deposited, that such filing and deposit will protect the Vendor's and the Lessor's rights in such Units and that no other filing, deposit or giving of notice with or to any Federal, state or local government or agency thereof is necessary to protect the rights of the Vendor and the Lessor in such Units.
- 5.2. <u>Insignia of Lessee</u>. Except as provided in § 5.1, the Lessee will not allow the name of any person, association or corporation to be placed on any Unit as a designation that might be interpreted as a claim of ownership; <u>provided</u>, <u>however</u>, that the Units may be lettered with the names or initials or other insignia customarily used by the Lessee or its affiliates.

§ 6. TAXES

The Lessee assumes responsibility for, and agrees to pay, hold harmless and indemnify on an after-tax basis the Lessor, the Investor and the Vendor and their servants, agents, employees, officers, directors, successors and assigns (the "Indemnified Persons") against, all taxes,

fees, assessments, withholdings, levies, imposts, duties, license and registration fees and other governmental charges of any nature whatsoever, including without limitation penalties, additions to tax and interest (all such taxes, fees, assessments, withholdings, levies, imposts, duties, license and registration fees, other governmental charges, penalties, additions to tax and interest being hereinafter called "Taxes"), imposed on, incurred by or asserted against any Indemnified Person or the Units or any thereof on account of, or with respect to or in any way relating to or arising out of, this Lease or the CSA or any document referred to herein or therein or any of the transactions contemplated hereby or thereby or the manufacture, purchase, acquisition, acceptance or rejection of the Units or any thereof or the ownership, delivery, non-delivery, leasing, subleasing, transfer of title, use, operation, maintenance, repair, condition, sale, return, abandonment or other application or disposition of the Units or any thereof or any indebtedness with respect thereto or the rentals, receipts, earnings or gains arising therefrom; provided, however, that there shall be no indemnification hereunder for (i) any Taxes imposed on or measured by any fees or compensation received by the institution who is the Vendor, (ii) Federal income taxes and income or franchise taxes imposed on the Investor or its successors and assigns with respect to interest paid on the CSA Indebtedness, (iii) Federal income taxes and income or franchise taxes imposed on the Lessor or its successors or assigns by the State of its incorporation or, if different, by the state in which its principal office is located or any taxing authority or jurisdiction therein or by any other taxing jurisdiction not related to: (w) the execution, delivery and performance of this Lease, the Participation Agreement or the CSA or any document referred to herein or hereof or any of the transactions contemplated hereby or thereby or (x) the manufacture, purchase, acquisition, acceptance, or rejection of the Units or any thereof, or (y) the ownership, delivery, non-delivery, leasing, subleasing, transfer of title, use, operation, maintenance, repair, condition, sale, return, abandonment or other application or disposition of the Units or any thereof or any indebtedness with respect thereto, or (z) the rentals, receipts, earnings or gains arising therefrom, and (iv) Taxes payable by the Lessor as a result of any transfer of any of its interest in the Equipment unless such transfer is made during the continuance of an Event of Default hereunder. The Lessee shall pay all Taxes for which it assumes liability hereunder when such Taxes are due and will indemnify each Indemnified Person to the extent required by this § 6 within thirty (30) days after receipt of a written demand for indemnification

from the Indemnified Person specifying the amount to be paid, the basis on which such amount was determined and the nature of the Taxes in question.

In the event that the Lessor shall become obligated to make any payment to the Builder or the Vendor or otherwise pursuant to any corresponding provision of the CSA (other than the proviso to the third paragraph of Article 12 thereof) not covered by the foregoing paragraph of this § 6, the Lessee shall pay such additional amounts (which shall also be deemed Taxes hereunder) to the Lessor as will enable the Lessor to fulfill completely its obligations pursuant to said provision.

In the event any returns, statements or reports with respect to Taxes are required to be made, the Lessee will make such returns, statements and reports in such manner as to show the interest of the Lessor and the Vendor in the Units; provided, however, that the Lessor shall, with respect to any State or political subdivision thereof of the United States of America, file such returns, statements, and reports relating to sales or use taxes, and taxes, fees, and charges on or measured by the Lessor's earnings or gross receipts arising from the Units, or the value added by the Lessor thereto, as the Lessee shall determine are required to be filed, and as shall be prepared by the Lessee, and the Lessor shall remit the amount thereof upon payment by the Lessee to the Lessor (such payment to be made forthwith upon demand by the Lessor therefor) of such taxes, fees and charges except as provided above. To the extent that the Lessor has information necessary to the preparation of such returns, statements and reports, it will furnish such information to the Lessee.

To the extent that the Lessee may be prohibited by law from performing in its own name the duties required by this § 6, the Lessor hereby authorized the Lessee to act in its own name and on its behalf; provided, however, that the Lessee shall indemnify and hold the Lessor harmless from and against any and all claims, costs, expenses, damages, losses and liabilities incurred in connection therewith as a result of, or incident to, any action by the Lessee pursuant to this authorization.

The Lessee shall, whenever reasonably requested by the Lessor, submit to the Lessor copies of returns, statements, reports, billings and remittances, or furnish other evidence satisfactory to the Lessor, of the Lessee's performance of its duties under this § 6. The Lessee shall also

furnish promptly upon request such data as the Lessor reasonably may require to permit the Lessor's compliance with the requirements of taxing jurisdictions.

The Lessee agrees to pay all amounts due under this § 6 free of any Taxes and to indemnify each Indemnified Person against any Taxes imposed by reason of any payment made by the Lessee so that the Indemnified Person to whom or for whose benefit the payment is made shall receive an amount which, net of any Taxes or other charges required to be paid by such Indemnified Person in respect thereof (calculated at the maximum statutory rates then in effect), shall be equal to the amount of payment otherwise required hereunder. Without limiting the foregoing, the amount which the Lessee shall be required to pay with respect to any Taxes subject to indemnification under this § 6 shall be an amount sufficient so that, after considering the tax and other effects of the Taxes in question and the receipt of indemnification payments hereunder, the Indemnified Person will have the same Net Economic Return had such Taxes not been incurred or imposed.

In the event that, during the continuance of this Lease, the Lessee becomes liable for the payment or reimbursement of any Taxes pursuant to this § 6, such liability shall continue, notwithstanding the expiration of this Lease, until all such Taxes are paid or reimbursed by the Lessee.

If any claim is made against any Indemnified Person or if any proceeding is commenced against any Indemnified Person for any Taxes as to which the Lessee has an indemnity obligation pursuant to this § 6, such Indemnified Person shall promptly notify the Lessee, but the failure to provide such notice shall not affect the Lessee's obligations hereunder to any Indemnified Person except that the Lessee shall not be obligated to indemnify such Indemnified Person for any additional Taxes or penalties or interest thereon to the extent resulting solely from such failure. If reasonably requested by the Lessee in writing, upon determination by such Indemnified Person (which determination shall be reasonable) that the action to be taken will not result in any substantial risk or consequences materially adverse to it and that the action to be taken will not result in any material danger of sale, forfeiture or loss of, or the creation of any liens (except if the Lessee shall have adequately bonded such lien or otherwise made provision to protect the interests of such Indemnified Person in respect of such lien in a manner satisfactory to such Indemnified Person) on the Units or any thereof, such Indemnified Person shall upon receipt of indemnity satisfactory to it and at the expense of the

Lessee (including, without limitation, all costs, expenses, attorneys' and accountants' fees and disbursements, penalties and interest) in good faith contest the validity, applicability or amount of such Taxes by, in such Indemnified Person's sole discretion, (A) resisting payment thereof, (B) not paying the same except under protest, if protest is necessary and proper, or (C) if payment is made, using reasonable efforts to obtain a refund thereof in appropriate administrative and judicial proceedings. Indemnified Person shall not be required to take any action pursuant to this paragraph unless and until the Lessee shall have agreed to indemnify such Indemnified Person in a manner reasonably satisfactory to such Indemnified person for any liability or loss which such Indemnified Person may reasonably incur as a result of such contest and shall have agreed to pay such Indemnified Person on demand all costs and expenses which such Indemnified Person may reasonably incur in connection with such contest (including fees and disbursements of counsel). Any contest required pursuant to the preceding sentence shall, at the option of such Indemnified Person, be conducted by such Indemnified Person or the Lessee in the name of the Lessee or such Indemnified Person. With respect to property taxes, sales and use taxes, and other similar taxes levied or imposed directly on the Equipment or the use or value thereof (other than income or franchise taxes on or based on income), at the request of the Lessee, the Indemnified Person will permit the Lessee to conduct the contest so long as the contested liability is the only contested liability of the Indemnified Person then pending or threatened before the respective taxing authorities. In the case of any contest conducted by the Lessee the Indemnified Person will take or join in any action reasonably requested by the Lessee with respect thereto. If any such contest involves payment of the Tax in question, the Lessee shall either make such payment directly to the appropriate authority or furnish to such Indemnified Person sufficient funds to make The Lessee agrees to give such Indemnified such payment. Person reasonable notice of any contest prior to the date by If any Indemnified Person which it must be commenced. obtains a refund of all or any part of any Tax paid or reimbursed by the Lessee and if no Event of Default or event with which the giving of notice and/or passage of time would become an Event of Default shall have occurred and be continuing, such Indemnified Person shall promptly pay to the Lessee the amount of such refund net of expenses not already paid or reimbursed by the Lessee; provided, however, that the aggregate amount of all payments with respect to any Taxes made by the Indemnified Person to the Lessee pursuant to this sentence shall not exceed the aggregate amount of all payments made by the Lessee to such Indemnified Person pursuant to this § 6 with respect to such

addition to such refund such Indemnitee shall receive an amount representing interest on the amount of such refund, the Lessee shall promptly be paid that portion of such interest that is fairly attributable to Taxes paid or reimbursed by the Lessee prior to the receipt of such refund. Nothing contained herein shall require any Indemnified Person to contest or permit the Lessee to contest a claim which it would otherwise be required to contest if such Indemnified Person shall waive payment by the Lessee of any amount that might otherwise be payable by the Lessee under this § 6 by way of indemnity in respect of such claim or if an Event of Default shall have occurred and be continuing hereunder.

§ 7. MAINTENANCE, CASUALTY OCCURRENCE, INSURANCE, ECONOMIC OBSOLESCENCE

- Maintenance. The Lessee at its own expense will maintain, service, repair and/or overhaul, as necessary, each Unit (including any parts installed on or replacements made to any Unit which are considered an accession thereto pursuant to § 9.3) so that each Unit will remain (a) in good operating condition (ordinary wear and tear excepted) for its intended purpose, (b) in compliance with any and all applicable laws and regulations and all mandatory safety bulletins issued by the Builder applicable to the Equipment, (c) meet the standards then in effect under the interchange rules of the American Association of Railroads and (d) in compliance with the Lessee's insurance policies and not in violation of any of the Builder's warranties. The Lessee shall not discriminate between the Equipment and such other similar equipment to the detriment of the Equipment in its maintenance procedures and practices.
- Casualty Occurrences. In the event that any 7.2. Unit shall be or become worn out, lost, stolen, destroyed or, in the good faith and reasonable opinion of the Lessee, irreparably damaged, or remains in an inoperable condition for six (6) consecutive months (excluding any period during which the Lessee is unable to repair same or make same operable due to labor strikes or other work stoppages, lockouts, or events beyond the reasonable control of the Lessee) from any cause whatsoever, or permanently returned to the Builder pursuant to any patent indemnity provision of the CSA prior to the return of such Unit in the manner set forth in § 14 hereof, or should title to any Unit be taken or requisitioned by condemnation or otherwise by any governmental authority, or should use of any Unit be taken or requisitioned by any governmental authority for a period

exceeding six (6) consecutive months (such occurrences being hereinafter called "Casualty Occurrences"), the Lessee shall promptly (but in any event within 30 days after such Casualty Occurrence) and fully notify the Lessor and the Vendor with respect thereto. On the date set forth in Schedule C hereto next succeeding such notice (each such date being herein called a "Casualty Payment Date") the Lessee shall pay to the Lessor an amount equal to the rental payment or payments in respect of such Unit then due and payable plus a sum equal to the Casualty Value (as defined in § 7.4 hereof) of such Unit as of such rental payment date. Upon the making of such payment by the Lessee in respect of any Unit, the rental for such Unit shall cease to accrue, the term of this Lease as to such Unit shall terminate and (except in the case of the loss, theft, complete destruction or permanent return to the Builder of such Unit) the Lessor shall be entitled to recover possession of such Unit.

Whenever any Unit shall suffer a Casualty Occurrence after termination of this Lease at the expiration of the original or extended term hereof and before such Unit shall have been returned in the manner provided in § 14 hereof, the Lessee shall promptly and fully notify the Lessor with respect thereto and pay to the Lessor (in addition to any amounts due pursuant to § 14 hereof) an amount equal to the Casualty Value as of the end of such original or extended term of this Lease, as the case may be.

- Lessee Agent for Disposal. The Lessor hereby appoints the Lessee its agent to dispose of any Unit suffering a Casualty Occurrence or any component thereof, at the best price obtainable on an "as is, where is" basis. Provided that the Lessee has previously paid the Casualty Value to the Lessor and provided no Event of Default (or other event which after notice or lapse of time or both would become an Event of Default) shall have occurred and be continuing, the Lessee shall be entitled to the net proceeds of such sale to the extent they do not exceed the Casualty Value of such Unit, and shall pay any excess to the Lessor. The Lessee shall be entitled to credit against the Casualty Value payable in respect of any Unit permanently returned to the Builder pursuant to any patent indemnity provision of the CSA an amount equal to any net patent indemnity payment in respect of such Unit made by the Builder to the Vendor under the CSA. The Lessee will pay all costs and expenses in connection with the sale of any Unit pursuant to a Casualty Occurrence.
- 7.4. <u>Casualty Value</u>. During the original term of this Lease, the <u>Casualty Value</u> of each Unit as of any Casualty Payment Date shall an amount equal to the

percentage of the Purchase Price of such Unit as is set forth in Schedule C hereto opposite such Casualty Payment Date. During any renewal term hereof the Casualty Value of each Unit as of any Casualty Payment Date shall be an amount equal to the Fair Market Value of such Unit at the beginning of such renewal term.

Requisition. In the event of the requisition (except after such requisition has become a Casualty Occurrence) of use by any governmental authority (hereinafter collectively called the "Government") of any Unit during the term of this Lease or any renewal thereof, all of the Lessee's obligations (including without limitation the obligation to pay rent) under this Lease with respect to such Unit shall continue to the same extent as if such requisition had not occurred, except that if such Unit is returned by the Government at any time after the end of the term of this Lease or any renewal thereof, the Lessee shall be obligated to return such Unit to the Lessor pursuant to § 11 or 14 hereof, as the case may be, promptly upon such return by the Government rather than at the end of the term of this lease or any renewal thereof, but the Lessee shall in all other respects comply with the provisions of said § 11 or 14, as the case may be, with respect to such Unit. All payments received by the Lessor or the Lessee from the Government for the use of such Unit during the term of this Lease or any renewal thereof and prior to such use having become a Casualty Occurrence shall, to the extent such payments are equal to or less than the rent payable by the Lessee hereunder in respect of such Unit, be paid over to, or retained by, the Lessee, provided no Event of Default (or other event which after notice or lapse of time or both would become an Event of Default) shall have occurred and be continuing, and all payments in excess thereof shall be paid over, or retained by, the All payments received by the Lessor or the Lessee from the Government for the use of such Unit after such use shall have become a Casualty Occurrence, shall be paid over to, or retained by, the Lessee, up to an amount equal to the Casualty Value actually paid by the Lessee in respect thereof, and all such payments in excess thereof shall be paid over to, or retained by, the Lessor. All payments received by the Lessor or the Lessee for the use of such Unit after the original term of this Lease or any renewal thereof shall be paid over to, or retained by, the Lessor.

Except as hereinabove provided in this § 7, the Lessee shall not be released from its obligation hereunder in the event of, and shall bear the risk of, any Casualty Occurrence to any Unit from and after delivery and acceptance thereof by the Lessee hereunder.

The Lessee will, at all times Insurance. prior to the return of the Units to the Lessor, at its own expense, cause to be carried and maintained with insurance carriers reasonably satisfactory to the Lessor and the Vendor physical damage insurance and public liability insurance in respect of the Units at the time subject hereto, against such reasonable risks, in such reasonable amounts and on such reasonable terms and conditions as are satisfactory to the Lessor and the Vendor, and, in any event, not less comprehensive in amounts and against risks customarily insured against by the Lessee in respect of similar equipment owned or leased by it, but in no event shall such coverage be for amounts or against risks less than the prudent public utility industry standards for such leased equipment, nor shall the amount of physical damage insurance for any Unit be less than the Casualty Value payable from time to time for such Unit. All policies with respect to such insurance shall name the Lessor and the Vendor as additional insureds or loss payees, as their interests may appear, shall provide for at least 30 days' prior written notice by the insurance carrier to the Lessor and the Vendor in the event of cancellation, expiration or amendment, shall include waivers by the insurer of all claims for premiums against the Lessor and the Vendor, shall provide that losses are payable notwithstanding, among other things, any act, omission or neglect of the Lessee, the Lessor or the Vendor (except for the sole negligence of the Lessor or the Vendor), any breach or violation by the Lessee, the Lessor or the Vendor of any warranty, declaration, condition or other provision contained in any such policy, or foreclosure, notice of sale or any other proceeding in respect of the Units (except for the sole negligence of the Lessor or the Vendor), or any change in the title to or ownership of any of the Units and shall contain provisions whereby the insurance carrier waives all rights of subrogation which it may have against any named insured therein or loss payee thereunder. Each such insurance policy shall expressly provide that all of the provisions thereof except the limits of liability (which shall be applicable to all insureds as a group) and liability for premiums (which shall be solely a liability of the Lessee) shall operate in the same manner as if they were a separate policy covering each insured and shall be primary without right of contribution from any insurance carried by the Lessor or the Vendor. The Lessee shall furnish to the Lessor and the Vendor a certificate of an independent insurance broker reasonably acceptable to Lessor evidencing the maintenance of the insurance required hereunder and

shall furnish certificates evidencing renewal 15 days prior to the expiration date of such policy or policies. Notwithstanding anything to the contrary contained herein, the Lessee agrees that it will not, without the prior written consent of the Lessor, reduce the amount of the physical damage insurance required to be maintained hereby or public liability insurance required to be maintained hereby below the dollar limits set forth in an officer's certificate provided by the Lessee at the First Delivery Date Closing, or reduce the risks covered by such insurance below those insured against as of the First Delivery Date, or retain self-insurance in excess of \$1,000,000 in respect of such physical damage insurance or \$2,500,000 in respect of such public insurance.

In the event of the failure of the Lessee to provide and furnish any of the aforesaid insurance, the Lessor or the Agent, upon notice to the Lessee, may, but shall not be obligated to, procure such insurance and the Lessee shall, upon demand, reimburse the Lessor and the Agent for all expenditures made by the Lessor or the Agent for such insurance, together with interest thereon computed at the rate set forth in § 16 in respect of overdue rentals from the date of the Agent's or the Lessor's payment until reimbursed by the Lessee.

- Insurance Proceeds and Condemnation Payments. If the Lessor shall receive any insurance proceeds or condemnation payments or any payments from the American Association of Railroads in respect of a Unit suffering a Casualty Occurrence, the Lessor shall, subject to the Lessee's having made payment of the Casualty Value in respect of such Unit and provided no Event of Default (or other event which after notice or lapse of time or both would become an Event of Default) shall have occurred and be continuing, pay such proceeds or payments to the Lessee up to an amount equal to the Casualty Value with respect to a Unit paid by the Lessee and any balance of such proceeds or payments shall remain the property of the Lessor. If the Lessor shall receive any insurance proceeds in respect of any Unit not suffering a Casualty Occurrence, all such proceeds shall be paid to the Lessee upon proof to the Lessor that any damage to such Unit in respect of which such proceeds were paid has been fully repaired so as to comply with the provisions of § 7.1 hereof, provided no Event of Default (or other event which after notice or lapse of time or both would become an Event of Default) shall have occurred and be continuing.
- 7.8. Economic Obsolescence. In the event that the Lessee shall during the original term hereof, in its

reasonable judgment, determine that the Units remaining under this Lease have become economically obsolete or surplus to the Lessee's requirements in the Lessee's business, as determined in good faith by the Vice President of Operations of the Lessee, the Lessee shall have the right, at its option and on at least 180 days' prior written notice to the Lessor and the Vendor, to terminate (which act shall hereinafter be called the "Termination") this Lease as to all or not less than 244 of such Units as of any succeeding January 2 or July 2 specified in such notice (such termination date so specified being hereinafter called the "Termination Date"); provided, however, that (i) the Termination Date shall not be earlier than January 2, 1996, (ii) no Event of Default or other event which after the lapse of time or the giving of notice or both would become an Event of Default shall have occurred and be continuing on such date or on the date on which the notice of such Termination shall be given, (iii) on the Termination Date all Units shall be in the condition required for redelivery pursuant to § 14 hereof and (iv) such right of Termination shall be available only once.

During the period after the giving of such notice until the fifth business day preceding the Termination Date, the Lessee shall use its best efforts to obtain bids (and the Lessor may at its option obtain additional bids) for the purchase of each such Unit, and the Lessee shall at least five business days prior to such Termination Date certify to the Lessor the amount of each such bid and the name and address of the party (which shall not be a corporation, other entity or individual affiliated with the Lessee or any other party from whom the Lessee or any such affiliate intends thereafter to lease such Unit) submitting such bid. On the Termination Date, the Lessor shall sell each such Unit for cash to the bidder who shall have submitted the highest bid prior to the Termination Date. The total sale price realized at each such sale shall be retained by the Lessor.

On such Termination Date, the Lessee shall pay to the Lessor with respect to the Units an amount equal to the sum of (i) the amount, if any, by which the Termination Value (as hereinafter defined) for the Units computed as of such date exceeds the sale price of the Units so sold after the deduction of all expenses incurred by the Lessor in connection with such sale plus (ii) the rental payment with respect to the Units due on such Termination Date plus (iii) an amount equal to the premium payable under Article 7 of the CSA in respect of the prepayment of the principal of

the CSA Indebtedness resulting from such Termination. The Termination Value of each such Unit as of the Termination Date shall be the percentage of Purchase Price of such Unit set forth in Schedule C hereto opposite such date. In no event shall the aggregate amount of sale proceeds retained by the Lessor and payments of rental and Termination Value received by the Lessor as aforesaid be less than the Termination Value (as defined in the CSA) with respect to the Units as of such Termination Date.

Except as is provided in the last paragraph of this § 7.8, if no sale of all the Units shall occur on the Termination Date with respect thereto as provided above, no Termination shall occur with respect to any of the Units and this Lease shall continue in full force and effect without change.

Upon the receipt by the Lessor of the amounts above described, the obligation of the Lessee to pay rent pursuant to § 3 hereof in respect of such Units on each rental payment date shall continue to and including the Termination Date but shall then terminate. The Lessor shall be under no duty to solicit bids, to inquire into the efforts of the Lessee to obtain bids or otherwise to take any action or incur any cost or expense in connection with any sale other than to transfer or to cause to be transferred all the Lessor's right, title and interest in and to such Unit to the purchaser named in the highest bid certified by the Lessee to the Lessor as above provided. Any such sale shall be free and clear of all the Lessee's rights to such Unit, but otherwise shall be made without recourse or warranties other than against Lessor's Liens as defined in § 13.3.

If the Lessee shall exercise its option to effect a Termination, the Lessor may, notwithstanding such election by the Lessee, by written notice to the Lessee given within 90 days after the termination notice is given to the Lessor and upon satisfaction and discharge of the Lessor's obligations under the CSA with respect to the Units, elect to retain such Units, in which case the Lessee shall not be obligated to pay the Termination Value to the Lessor. In the event the Lessor shall so elect to retain such Units and delivers to the Lessee evidence of the satisfaction and discharge of the Lessor's obligations under the CSA with respect to the Units, the Lessee shall deliver such Units to the Lessor in accordance with the provisions of § 14 hereof.

§ 8. REPORTS

On or before April 30 in each year, commencing with the calendar year 1986, the Lessee will furnish to the Lessor and the Vendor a certificate signed by the Vice President-Operations of the Lessee or another qualified person satisfactory to the Lessor and the Vendor (a) setting forth as of the preceding December 31 the amount, description and numbers of all Units then leased hereunder and covered by the CSA, the amount, description and numbers of all Units that have suffered a Casualty Occurrence during the preceding calendar year and such other information regarding the condition and state of repair of any Units as the Lessor or the Vendor may reasonably request, (b) stating that, in the case of all Units repainted or repaired during the period covered by such statement, the numbers and markings required by § 5 hereof have been preserved or replaced. (c) further stating that the Lessee is in compliance under the Lease and has performed or has caused to be performed the required maintenance of the Unit and that no event has occurred which with the lapse of time or notice or both would constitute an Event of Default or, if such an event has occurred, the nature and status thereof. The Lessor and the 'Vendor shall each have the right by its agents to inspect the Units and the Lessee's records with respect thereto at such reasonable times as the Lessor or the Vendor may request during the continuance of this Lease. The Lessee shall promptly notify the Lessor and the Vendor of any occurrence of an Event of Default or other event which after notice or lapse of time or both would become an Event of Default, specifying such Event of Default and all such events and the nature and status thereof.

- § 9. DISCLAIMER OF WARRANTIES, COMPLIANCE WITH APPLICABLE LAWS, ADDITIONS, MODIFICATIONS AND IMPROVEMENTS, INDEMNIFICATION
- 9.1. Disclaimer of Warranties. THE LESSOR DOES NOT MAKE, HAS NOT MADE AND SHALL NOT BE DEEMED TO MAKE OR HAVE MADE ANY WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE DESIGN OR CONDITION OF, OR AS TO THE QUALITY OF THE MATERIAL, EQUIPMENT OR WORKMANSHIP IN, THE UNITS DELIVERED TO THE LESSEE HEREUNDER, AND THE LESSOR DOES NOT MAKE ANY WARRANTY OF MERCHANTABILITY OR FITNESS OF THE UNITS FOR ANY PARTICULAR PURPOSE OR AS TO TITLE TO THE UNITS OR ANY COMPONENT THEREOF, OR AS TO THE LESSEE'S RIGHT TO QUIET ENJOYMENT THEREOF OR ANY OTHER REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO ANY UNIT,

EITHER UPON DELIVERY THEREOF TO THE LESSEE OR OTHERWISE, it being agreed that all such risks, as among the Lessor and the Lessee, are to be borned by the Lessee; but the Lessor hereby irrevocably appoints and constitutes the Lessee its agent and attorney-in-fact during the term of this Lease to assert and enforce from time to time, in the name of and for the account of the Lessor and/or the Lessee, as their interests may appear, at the Lessee's sole cost and expense, whatever claims and rights the Lessor may have against the Builder under the provisions of Items 3 and 4 of Annex A to the CSA; provided, however, that if at any time an Event of Default shall have occurred and be continuing, the Lessor may assert and enforce, at the Lessee's sole cost and expense, such claims and rights. The Lessor shall not have any responsibility or liability to the Lessee or any other person with respect to any of the following: (i) any liability, loss or damage caused or alleged to be caused directly or indirectly by any Units or by any inadequacy thereof or deficiency or defect therein or by any other circumstances in connection therewith; (ii) the use, operation or performance of any Units or any risks relating thereto; (iii) any interruption of service, loss of business or anticipated profits or consequential damages; or (iv) the delivery, operation, subleasing, servicing, maintenance, repair, improvement or replacement of any Units. acknowledges and agrees that each Unit upon acceptance will be of a size, design, capacity and manufacture selected by the Lessee and that the Lessee is satisfied that the same is suitable for its purpose. The Lessee's delivery of a Certificate of Acceptance shall be conclusive evidence as between the Lessee and the Lessor that the Units described therein are in all the foregoing respects satisfactory to the Lessee, and the Lessee will not assert any claim of any nature whatsoever against the Lessor based on any of the foregoing matters.

9.2. Compliance with Applicable Laws. The Lessee agrees, for the benefit of the Lessor and the Vendor, at all times to comply in all respects (including, without limitation, with respect to the use, maintenance and operation of each Unit) with all applicable laws of the jurisdictions in which its operations involving the Units may extend, with the interchange rules of the Association of American Railroads, if applicable, and with all lawful rules of the United States Department of Transportation, the Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Units, to the extent that such laws and rules affect the title, operation or use of the Units

(all such laws and rules to such extent called "Applicable Law"), and in the event that, prior to the expiration of this Lease or any renewal thereof, Laws require any alteration, replacement, addition or modification of or to any part on any Unit, the Lessee will conform therewith at its own expense; provided, however, that the Lessee may at its own expense, in good faith, contest the validity or application of any Law in any reasonable manner which does not, in the opinion of the Lessor or the Vendor, adversely affect the property or rights of the Lessor or the Vendor under this Lease or under the CSA.

- Additions, Modifications and Improvements. 9.3. The Lessee, at its own cost and expense, may from time to time make such other additions, modifications and improvements to the Units during the term of this Lease as are readily removable without causing material damage to the Units (and do not adversely affect the value of the Units). The additions, modifications and improvements made by the Lessee under the preceding sentence shall be owned by the Lessee (or such other party as may have title thereto), except to the extent such additions, modifications or improvements are described in the following sentence. Any and all parts installed on and additions and replacements made to any Unit (i) which are not readily removable without causing material damage to such Unit and were installed or were added to such Unit in contravention of the provisions contained hereinabove, (ii) the cost of which is included in the Purchase Price of such Unit, (iii) in the course of ordinary maintenance of the Units or (iv) which are required for the operation or use of such Unit by the interchange rules of the Association of American Railroads or by the regulations of the Interstate Commerce Commission, the United States Department of Transportation or any other regulatory body, shall constitute accessions to such Unit and full ownership thereof free from any lien, charge, security interest or encumbrance (except for those created by the CSA) shall immediately be vested in the Lessor.
- 9.4. Indemnification. The Lessee shall pay, and shall protect, indemnify and hold each Indemnified Person harmless from and against any and all causes of action, suits, penalties, claims, demands or judgments, of any nature whatsoever which may be imposed on, incurred by or asserted against any Indemnified Person (including any or all liabilities, obligations, damages, reasonable costs, reasonable disbursements, reasonable expenses [including without limitation attorneys' fees and expenses of any Indemnified Person] relating thereto) in any way relating to

or arising or alleged to arise out of this Lease or the Units, including without limitation, those in any way relating to or arising or alleged to arise out of (i) the manufacture, construction, purchase, acceptance, rejection, ownership, delivery, nondelivery, lease, possession, use, operation, condition, sale, storage, return or other disposition of any Unit or portion thereof; (ii) any latent or other defects whether or not discoverable by any Indemnified Person or the Lessee; (iii) any claim for patent, trademark or copyright infringement; (iv) any claims based on strict liability in tort; (v) any injury to or the death of any person or any damage to or loss of property on or near the Units or in any manner growing out of or concerned with, or alleged to grow out of or be connected with, the ownership, use, replacement, adaptation or maintenance of the Units or of any other equipment in connection with the Units (whether owned or under the control of the Lessor, the Lessee or any other person) or resulting or alleged to result from the condition of any thereof; (vi) any violation, or alleged violation, of any provision of this Lease or of any agreement, law, rule, regulation, ordinance or restriction, affecting or applicable to the Units or the leasing, ownership, use, replacement, adaptation or maintenance thereof; or (vii) any claim arising out of any of the Lessor's or the Vendor's obligations under the Lease Assignment, the CSA or the Participation Agreement, except to the extent such claim arises from the gross negligence or wilful misconduct of the person otherwise to be indemnified hereunder (all such matters called "Indemnified Matters"). The Lessee shall be obligated under this § 9.4, irrespective of whether any Indemnified Person shall also be indemnified with respect to the same Indemnified Matter under any other agreement by any other person, and the Indemnified Person seeking to enforce the indemnification may proceed directly against the Lessee under this § 9.4 without first resorting to any such other rights of indemnification. In case any action, suits or proceeding is brought against any Indemnified Person, in connection with any Indemnified Matter, the Lessee may and, upon such Indemnified Person's request, will at the Lessee's expense resist and defend such action, suit or proceeding, or cause the same to be resisted or defended by counsel selected by the Lessee and approved by such Indemnified Person, as the case may be, and, in the event of any failure by the Lessee to so do, the Lessee shall pay all reasonable costs and expenses (including without limitation attorneys' fees and expenses) incurred by such Indemnified Person in connection with such action, suit or proceeding. event the Lessee is required to make any payment under this

§ 9.4, the Lessee shall pay such Indemnified Person an amount which, after deduction of all taxes required to be paid by such Indemnified Person in respect of the receipt thereof under the laws of the United States or of any political subdivision thereof (after giving credit for any savings in respect of any such taxes by reason of deductions, credits or allowances in respect of the payment of the expense indemnified against, and of any other such taxes as determined in the sole discretion of the Indemnified Person), shall be equal to the amount of such payment. Lessee and each Indemnified Person agree to give each other promptly upon obtaining knowledge thereof written notice of any claim or liability hereby indemnified against; provided, however, that any failure of any Indemnified Person to furnish such notice in a prompt manner shall not relieve the Lessee from its obligation to indemnify pursuant to this Upon the payment in full of any indemnities as contained in this § 9.4 by the Lessee, and provided that no Event of Default (or other event which with lapse of time or notice or both would constitute an Event of Default) shall have occurred and be continuing, it shall be subrogated to any right of such Indemnified Person in respect of the matter against which indemnity has been paid as aforesaid. Any payments received by such Indemnified Person from any. person (except the Lessee) as a result of any matter with respect to which such Indemnified Person has been indemnified by the Lessee pursuant to this § 9.4 shall be paid over to the Lessee to the extent necessary to reimburse the Lessee for indemnification payments previously made in respect of such matter. Nothing herein contained shall constitute a guaranty by the Lessee of the CSA Indebtedness under the CSA or a quaranty of the residual value of any Unit.

The Lessee further agrees to indemnify, protect and hold harmless each Indemnified Person from and against any and all liabilities, claims, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against such Indemnified Person because of the use in or about the construction or operation of any of the Units of any article or material specified by the Lessee and not manufactured by the Builder or of any design, system, process, formula or combination specified by the Lessee and not developed or purported to be developed by the Builder which infringes or is claimed to infringe on any patent or other right.

The Lessee shall bear the responsibility and risk for, and shall not be released from its obligations here-

under in the event of, any damage to or the destruction or loss of any or all of the Units of Equipment.

The Lessee agrees to prepare and deliver to the Lessor within a reasonable time prior to the required filing date (or, to the extent permissible, file on behalf of the Lessor) any and all reports (other than tax returns) to be filed by the Lessor with any Federal, state or other regulatory authority by reason of the ownership by the Lessor or the Vendor of the Units, or the leasing thereof to the Lessee.

The indemnities contained in this § 9.4 shall survive the expiration or termination of this Lease with respect to all events, facts, conditions or other circumstances occurring or existing prior to such expiration or termination and are expressly made for the benefit of and shall be enforceable and collectible directly from the Lessee by any Indemnified Person notwithstanding the provisions of the Lease Assignment or the Consent. None of the indemnities in this § 9.4 shall be deemed to create any rights of subrogation in any insurer or third party against the Lessee therefor, from or under any Indemnified Person, whether because of any claim paid or defense provided for the benefit thereof or otherwise.

§ 10. DEFAULT

- 10.1. Events of Default, Remedies. If, during the continuance of this Lease one or more of the following events (each such event being herein sometimes called an "Event of Default") shall occur:
 - (A) default shall be made in payment of any amount provided for in § 3, 6, 7, 9, 13 or 16 hereof, and such default shall continue for five business days;
 - (B) the Lessee shall make or permit any unauthorized assignment or transfer of this Lease, or any interest herein, or of the right to possession of the Units, or any thereof;
 - (C) default shall be made in observance or performance of any other of the covenants, conditions and agreements on the part of the Lessee contained herein or in the Consent or in the Participation Agreement and such default shall continue for 30 days after the earlier of (i) written notice from the Lessor or the

Vendor to the Lessee specifying the default and demanding that the same be remedied and (ii) the date on which such default shall first become known to any officer of the Lessee;

- (D) any representation or warranty made by the Lessee herein or in the Consent or in the Participation Agreement or in any agreement, document or certificate delivered by the Lessee in connection herewith or therewith (other than the Indemnity Agreement) shall prove to have been incorrect in any material respect when made or given;
- a petition for reorganization under Title 11 of the United States Code, as now constituted or as hereafter amended, shall be filed by or against the Lessee and, unless such petition shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Lessee under this Lease, the Consent and the Indemnity Agreement shall not have been and shall not continue to be duly assumed in writing within 60 days after such petition shall have been filed, pursuant to a court order or decree, by a trustee or trustee's appointed (whether or not subject to ratification) in such proceedings in such manner that such obligations shall have the same status as expenses of administration and obligations incurred by such trustee or trustees; or
- any other proceeding shall be commenced by or against the Lessee for any relief which includes or might result in any modification of the obligations of the Lessee under this Lease, the Consent and the Indemnity Agreement under any bankruptcy or insolvency laws or laws relating to the relief of debtors, readjustments of indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit any readjustments of such obligations), and, unless such proceedings shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all such obligations shall not have been and shall not continue to be duly assumed in writing within 60 days after such proceedings shall have been commenced, pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed

(whether or not subject to ratification) for the Lessee or for the property of the Lessee in connection with any such proceedings in such manner that such obligations shall have the same status as expenses of administration and obligations incurred by such trustee or trustees or receiver or receivers;

then, in any such case, the Lessor, at its option, may:

- (a) proceed by appropriate court action or actions, either at law or in equity, to enforce performance by the Lessee of the applicable covenants of this Lease or to recover damages for the breach thereof; or
- by notice in writing to the Lessee terminate this Lease, whereupon all rights of the Lessee to the use of the Units shall absolutely cease and terminate as though this Lease had never been made, but the Lessee shall remain liable as herein provided; and thereupon the Lessor may by its agents enter upon the premises of the Lessee or other premises, insofar as the Lessee may be lawfully authorized to so permit, where any of the Units may be located, without judicial process if this can be done without breach of the peace and in accordance with due process of law, and take possession of all or any of such Units and thenceforth hold, possess, sell, operate, lease and enjoy the same free from any right of the Lessee, or its successors or assigns, to use the Units for any purposes whatever and without any duty to account to the Lessee for such action or inaction or for any proceeds arising therefrom; but the Lessor shall, nevertheless, have a right to recover from the Lessee any and all amounts which under the terms of this Lease may be then due or which may have accrued to the date of such termination (computing the rental for any number of days less than a full rental period by multiplying the rental for such full rental period by a fraction of which the numerator is such number of days and the denominator is the total number of days in such full rental period) and also to recover forthwith from the Lessee as damages for loss of the bargain and not as a penalty whichever of the following amounts that the Lessor, in its sole discretion, shall specify, (i) a sum, with respect to each Unit, which represents (w) the excess of the present value, at the time of such termination, of the entire unpaid balance of all rental for such Unit which would otherwise have accrued hereunder from the date of such termination to the end of the term as to such Units

such present value to be computed on the basis of 10% per annum discount, compounded semiannually from the respective dates upon which rental would have been payable hereunder had this Lease not been terminated over the then present value of the rental which the Lessor reasonably estimates to be obtainable for each Unit during such period, such present value to be the respective dates upon which rentals would have been payable hereunder had this Lease not been terminated) or, if such Unit is sold, the net proceeds of the sale plus (x) any damages and expenses, including reasonable attorneys' fees, in addition thereto which the Lessor shall have sustained by reason of the breach of any covenant, representation or warranty of this Lease other than for the payment of rental or (ii) the sum of (y) an amount equal to the excess, if any, of the Casualty Value as of the Casualty Payment Date on or next preceding date of termination over the amount the Lessor reasonably estimates to be fair market sales value of such Unit at such time plus (z) any amounts described in clause (x) above; provided, however, that in the event the Lessor shall have sold any Unit, the Lessor, in lieu of collecting any amounts payable by the Lessee pursuant to the preceding clause (ii) (y) with respect to such Unit, may demand that the Lessee pay to the Lessor and the Lessee shall pay to the Lessor on the date of such sale, as liquidated damages for loss of a bargain and not as a penalty, an amount equal to the excess, if any, of the Casualty Value for such Unit as of the Casualty Payment Date on or next preceding the date of termination over the net proceeds of such sale.

In addition, the Lessee shall be liable, except as otherwise provided above, for any and all unpaid amounts due hereunder before, during or after the exercise of any of the foregoing remedies and for all reasonable attorneys' fees and other costs and expenses incurred by reason of the occurrence of any Event of Default or the exercise of the Lessor's remedies with respect thereto, including all costs and expenses incurred in connection with the return of any Unit.

10.2. Remedies Not Exclusive, Waiver. The remedies in this Lease provided in favor of the Lessor shall not be deemed exclusive, but shall be cumulative and may be exercised concurrently or consecutively, and shall be in addition to all other remedies in its favor existing at law or in equity. The Lessee hereby waives any mandatory re-

quirements of law, now or hereafter in effect, which might limit or modify the remedies herein provided, to the extent that such waiver is not, at the time in question, prohibited by law. The Lessee hereby waives any and all existing or future claims to any offset against the rental payments due hereunder, and agrees to make such payments regardless of any offset or claim which may be asserted by the Lessee or on its behalf. The Lessee hereby waives any and all claims against the Lessor and the Vendor and their agent or agents for damages of whatever nature in connection with any retaking of any Unit pursuant to this § 10.2.

10.3. Failure to Exercise Rights is not Waiver. No failure by the Lessor to exercise, and no delay by the Lessor in exercising, any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or privilege by the Lessor preclude any other or further exercise thereof, or the exercise of any other right, power or privilege.

§ 11. RETURN OF UNITS UPON DEFAULT

11.1. Return of Units. If this Lease shall terminate pursuant to § 10 hereof, the Lessee shall forthwith deliver possession of the Units to the Lessor. Unit so delivered shall be in the condition required by § 7.1 hereof and shall have attached or affixed thereto any special device considered an accession thereto as provided in § 9 and shall have removed therefrom at the Lessee's expense any addition, modification or improvement which, as provided in § 9, is owned by the Lessee. For the purpose of delivering possession, the Lessee shall at its own cost, expense and (a) forthwith and in the usual manner (including but not by way of limitation, giving prompt telegraphic and written notice to the Association of American Railroads and all railroads to which any Units have been interchanged or which may have possession thereof to return such Unit so interchanged) cause such Units to be placed upon such storage tracks at such site or sites as the Lessor reasonably may designate; and (b) permit the Lessor to store such Units on such tracks at the risk of the Lessee without charge for insurance, rent or storage until all such Units have been sold, leased or otherwise disposed of by the Lessor.

The assembling, delivery, storage, insurance and transporting of the Units as hereinbefore provided shall be at the expense and risk of the Lessee and are of the essence

of this Lease and, upon application to any court of equity having jurisdiction, the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee so to assemble, deliver and store the Units. During any storage period, the Lessee will, at its own expense, maintain and keep the Equipment in the condition required by § 7.1 hereof and will permit the Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser, lessee or user of any such Unit, to inspect the same. All amounts earned in respect of the Units after the date of termination of this Lease shall belong to the Lessor and, if received by the Lessee, shall be held in trust for the benefit of the Lessor and promptly turned over to the Lessor. In the event any Unit is not assembled, delivered and stored, as hereinabove provided, within 30 days after such termination, the Lessee shall, in addition, pay to the Lessor for each day thereafter an amount equal to the amount, if any, by which 0.052894% of the Purchase Price for such Unit for each such day exceeds the actual earnings received by the Lessor with respect to such Unit for each such day.

11.2. Lessor Appointed Agent of Lessee. Without in any way limiting the foregoing obligations of the Lessee under this § 11, the Lessee hereby irrevocably appoints the Lessor as the agent and attorney of the Lessee, with full power and authority, at any time while the Lessee is in default hereunder and is obligated to deliver possession of any Unit to the Lessor, to demand and take possession of such Unit in the name and on behalf of the Lessee from whomsoever shall be in possession of such Unit at the time.

§ 12. ASSIGNMENT, POSSESSION AND USE

- assignable in whole or in part by the Lessor without the consent of the Lessee, but the Lessee shall be under no obligation to any assignee of the Lessor except upon written notice of such assignment from the Lessor. The Lessee hereby consents to the assignment of this Lease pursuant to the Lease Assignment. All the rights of the Lessor hereunder shall inure to the benefit of the Lessor's successors and assigns.
- 12.2 Lessee's Rights to Use the Units; To Permit Use Thereof by Others and to Sublease the Units. So long as (i) no Event of Default exists hereunder, (ii) the Lessee is

complying with the provisions of the Consent and (iii) the Vendor is entitled to apply the Payments (as defined in the Lease Assignment) in accordance with the Lease Assignment, the Lessee shall be entitled to the possession and use of the Units in accordance with the terms of this Lease. Lessee shall not assign or transfer its leasehold interest under this Lease in the Units or any of them without the prior written consent of the Lessor and the Vendor, except as provided in this § 12.2; and the Lessee shall not part with possession or control of, or suffer or allow to pass out of its possession or control, any of the Units without the prior written consent of the Lessor and the Vendor, except as provided in this § 12.2. Without the prior written consent of the Lessor and the Vendor, the Lessee may sublease (which sublease shall be expressly subject and subordinate to the rights and remedies of the Lessor and the Vendor hereunder and under the CSA) the Units to, or permit their use by, any person controlling, controlled by, or under common control with the Lessee or a user incorporated in the United States of America (or any State thereof or the District of Columbia) upon lines of a railroad company or companies incorporated in the United States of America (or any State thereof or the District of Columbia) or over which the Lessee, such user, or such railroad company or companies have trackage rights or rights for operation of their trains and upon the lines of railroad of connecting and other carriers in the usual interchange of traffic or in through or run-through service, but only upon and subject to all the terms and conditions of this Lease; provided, however, that the Vendor's and the Lessor's prior written consent, not to be unreasonably withheld, must be obtained for any sublease (other than to an entity controlling, controlled by, or under common control with, the Lessee) that is for a term longer than one year or is renewable for a term more than one year; provided further, however, that the Lessee shall not sublease or permit the sublease or use of any Unit to service involving operation or maintenance outside the United States of America or use or permit the use of any Unit for purposes other than the transport of coal without the consent of the Lessor; and provided further, however, that any such sublease or use shall be consistent with the provisions of the Indemnity Agreement and not result in any adverse income tax consequences to the Lessor. The Lessee may not assign any of its rights or obligations hereunder to any person, firm or entity without the Vendor's and the Lessor's prior written consent except to a person, firm or entity acquiring substantially all of the Lessee's assets or merging or consolidating with the Lessee, provided that the net worth of the person, firm or entity incorporated in the

United States of America (or in any state thereof or the District of Columbia) and acquiring such assets or surviving such merger or consolidation is at least equal to the net worth of the Lessee immediately prior to such acquisition, merger or consolidation and provided further, that no Event of Default hereunder shall exist immediately after completion of such acquisition, merger or consolidation. No such assignment or sublease shall relieve the Lessee of its obligations hereunder which shall be and remain those of a principal and not a surety. The Lessee shall not use, or permit any other person to use, the Equipment in a manner inconsistent with the purposes for which it was designed.

expense, will promptly pay or discharge any and all sums claimed by any party which, if unpaid, might become a lien, charge, security interest or other encumbrance (other than Lessor Liens and other than encumbrances created by the Vendor or resulting from claims against the Vendor not related to the ownership of the Units) upon or with respect to any Unit or the interest of the Lessor, the Vendor or the Lessee therein, and will promptly discharge any such lien, claim, security interest or other encumbrance which arises.

§ 13. RENEWAL OPTIONS, PURCHASE OPTION

- Renewal Options. Provided that this Lease 13.1. has not been earlier terminated and no Event of Default or event which with lapse of time and/or demand provided for herein could constitute an Event of Default shall have occurred and be continuing, the Lessee may by written notice delivered to the Lessor not less than 180 days prior to the end of the original term or any extended term of this Lease, as the case may be, elect to extend the term of this Lease in respect of all or not fewer than 244 of the Units then covered by this Lease, for an additional one-year period commencing on the scheduled expiration of the original term or extended term of this Lease, as the case may be, at a Fair Market Rental (as defined below) payable in semiannual payments in arrears during such extended term; provided, however, that no option to extend the term of this Lease may be exercised by the Lessee under this § 13.1 more than seven times.
- 13.2. Purchase Option. Provided that this Lease has not been earlier terminated and no Event of Default or event which with lapse of time and/or demand provided for herein could constitute an Event of Default shall have

occurred and be continuing, at the end of the original or any extended term of this Lease the Lessee may by written notice delivered to the Lessor not less than 180 days prior to the end of such term of this Lease, elect to purchase all or not fewer than 244 of the Units then covered by this Lease for the then "Fair Market Purchase Price" thereof.

13.3. Fair Market Rental and Fair Market Purchase Fair Market Rental and Fair Market Purchase Price shall be determined on the basis of, and shall be equal in amount to, the cash rental for a one-year period or the purchase price, as the case may be, which would obtain in an arm's-length transaction between an informed and willing lessee or purchaser and an informed and willing lessor or seller, as the case may be, under no compulsion to lease or sell and, in such determination, costs of removal from the location of current use shall not be a deduction from such rental or purchase price and it shall be assumed that all of the Units for which such determination is being made have been collected in one place and have been maintained in full compliance with all of the provisions of § 7.1 hereof. If, after 10 days from the giving of notice by the Lessee of the Lessee's election to extend the term of this Lease or to exercise its purchase option, the Lessor and the Lessee are unable to agree upon a determination of the Fair Market Rental or Fair Market Purchase Price of the Units, such rental or purchase price shall be determined in accordance with the foregoing definition by the following procedure: If either party to such determination shall have given written notice to the other requesting determination of such rental or purchase price by this appraisal procedure, the parties shall consult for the purpose of appointing a qualified independent appraiser by mutual agreement. such appraiser is so appointed within 5 days after such notice is given, each party shall appoint an independent appraiser within 10 days after such notice is given, and the two appraisers so appointed shall within 20 days after such notice is given appoint a third independent appraiser. no such third appraiser is appointed within 20 days after such notice is given, either party may request the American Arbitration Association to make such appointment, and both parties shall be bound by any appointment so made. Any appraiser or appraisers appointed pursuant to the foregoing procedure shall be instructed to determine the Fair Market Rental (and, in the case of each renewal period, the Fair Market Purchase Price at the beginning of such renewal period) of the Units subject to the proposed extended term, or the Fair Market Purchase Price, as the case may be, within 30 days after his or their appointment. If the

parties shall have appointed a single appraiser or if either party shall have failed to appoint an appraiser, the determination of Fair Market Rental or Fair Market Purchase Price, as the case may be, of the single appraiser appointed shall be final. If three appraisers shall be appointed, the determination of the appraiser which differs most from that of the other two appraisers shall be excluded, the remaining two determinations shall be averaged and such latter average shall be final and binding upon the parties hereto as the Fair Market Rental or Fair Market Purchase Price, as the case may be. The appraisal proceedings shall be conducted in accordance with the Commercial Arbitration Rules of the American Arbitration Association as in effect on the date hereof, except as modified hereby. The provision for this appraisal procedure shall be the exclusive means of determining Fair Market Rental or Fair Market Purchase Price, as the case may be, and shall be in lieu of any judicial or other procedure for the determination thereof, and each party hereto hereby consents and agrees not to assert any The Lessee shall bear all judicial or other procedures. appraisal procedure expenses.

Upon payment of the purchase price of any Unit, pursuant to an election by the Lessee to purchase the Units, the Lessor shall upon request of the Lessee execute and deliver to the Lessee, or to the Lessee's assignee or nominee, a bill of sale (without representations or warranties) for such Unit such as will transfer to the Lessee such title to such Unit as the Lessor derived from the Vendor, free and clear of all Lessor Liens. "Lessor Liens" shall mean all liens, security interests and encumbrances created by or arising through the Lessor, and not related to the transactions contemplated hereby or by the Participation Agreement, other than liens, security interests and encumbrances which the Lessee is obligated to pay or discharge under or pursuant to this Lease or Participation Agreement.

§ 14. RETURN OF UNITS UPON EXPIRATION OF TERM

As soon as practicable on or after the expiration of the original or any extended term of this Lease with respect to any Unit or on or after a Termination of this Lease pursuant to § 7.9 hereof, the Lessee will, at its own cost and expense, at the request of the Lessor, deliver possession of such Unit to the Lessor upon such storage tracks at such site or sites (not exceeding three sites) within a 750-mile radius of Superior, Wisconsin, or Decker,

Montana, as the Lessor may designate, or, in the absence of such designation, as the Lessee may select, and permit the Lessor to store such Unit on such tracks for a period not exceeding 180 days following notification to the Lessor by the Lessee that all the Units have been so assembled and delivered for storage, all as directed by the Lessor, the movement and storage of such Units to be at the expense and risk of the Lessee (including the insurance required by § 7.8 hereof); and in the event that any Unit shall suffer a Casualty Occurrence during such storage period, the Lessee shall pay the Lessor the Casualty Value thereof as provided in § 7.4 hereof. During any such storage period the Lessee will permit the Lessor or any person designated by it, including the authorized representatives of any prospective purchaser, lessee or user of such Unit, to inspect the same; provided, however, that the Lessee shall not be liable, except in the case of negligence or strict liability of the Lessee or of its employees or agents, for any injury to, or the death of, any person exercising, on behalf of either the Lessor any prospective purchaser, lessee or user, such rights of inspection. Each Unit returned to the Lessor pursuant to this § 14 shall be in the condition required by the maintenance provisions of § 7 hereof and shall have attached or affixed thereto any special device considered an accession thereto as provided in § 9 and shall have removed therefrom at the Lessee's expense any addition, modification or improvement which, as provided in § 9, is owned by the Lessee. The assembling, delivery, storage and transporting of the Units as hereinbefore provided are of the essence of this Lease, and, upon application to any court of equity having jurisdiction in the premises, the Lessor shall be entitled to a decree against the Lessee requiring specific performance thereof. During any storage period, the Lessee will, at its own expense, maintain and keep the Units in the condition in which Lessee normally maintains similar equipment while in a similar storage state and will permit the Lessor or any person designated by it, including the authorized representatives of any prospective purchaser, lessee or user of any such Unit, to inspect the same. the event any Unit is not assembled, delivered and stored, as hereinabove provided, within 30 days after such termination, the Lessee shall pay to the Lessor for each day from the date of such termination during which such Unit is being used by or with the consent of the Lessee an amount equal to the amount, if any, by which .026447% of the Purchase Price of such Unit for each such day exceeds the actual earnings received by the Lessor with respect to such Unit for each such day.

§ 15. | RECORDING

The Lessee, at its own expense, will cause this Lease, the CSA and any assignment hereof or thereof to be filed in accordance with 49 U.S.C. § 11303 The Lessee will undertake the filing, registering, deposit, and recording required of the Lessor under the CSA and will from time to time do and perform any other act and will execute, acknowledge, deliver, file, register, record (and will refile, reregister, deposit and redeposit or rerecord whenever required) any and all further instruments required by law or reasonably requested by the Lessor or the Vendor for the purpose of proper protection, to their satisfaction, of the Vendor's and the Lessor's respective rights in the Units, or for the purpose of carrying out the intention of this Lease, the CSA and the assignments thereof to the Vendor; and the Lessee will promptly furnish to the Vendor and the Lessor evidence of all such filing, registering, depositing, recording and other acts which may be required under this § 15, and an opinion or opinions of counsel for the Lessee with respect thereto satisfactory to the Vendor and the Lessor. This Lease and the CSA, and the assignments thereof, shall be filed with the Interstate Commerce Commission prior to the delivery and acceptance hereunder of any Unit.

§ 16. INTEREST ON OVERDUE RENTALS

Anything to the contrary herein contained notwithstanding, any nonpayment of rentals and other obligations due hereunder shall result in the obligation on the part of the Lessee promptly to pay, to the extent legally enforceable, an amount on the overdue rentals and other obligations for the period of time during which they are overdue at a rate per annum equal to 12.67% in the case of amounts assigned and payable to the Agent and at the Prime Rate plus 1% in the case of amounts payable to the Vendee, or such lesser amount as may be legally enforceable. Interest shall be determined on the basis of a 360-day year for the actual number of days elapsed. For the purposes hereof, the "Prime Rate" shall mean the prime commercial lending rate of The Bank of New York as publicly announced to be in effect from time to time.

§ 17. NOTICES

Any notice required or permitted hereunder shall be deemed to have been received by the addressee on the date of actual receipt (if such date is a business day, otherwise on the next business day), if transmitted by mail, telex, telecopy or similar transmission, or by hand, addressed as follows:

- (a) if to the Lessor, at 48 Wall Street, New York, N.Y. 10015, Attention of Equipment Leasing Group; and
- (b) if to the Lessee, at 2000 Second Avenue, Detroit, Michigan 48226, Attention of Secretary

or addressed to either party at such other address as such party shall hereafter furnish to the other party in writing. Copies of each such notice shall be given to the Vendor at P.O. Box 2258 (2 Hopkins Plaza, if by hand), Baltimore, Maryland 21203, Attention of Corporate Trust Department.

SECTION 18. LESSOR'S RIGHT TO PERFORM FOR LESSEE

If the Lessee fails to perform any of its agreements contained herein, the Lessor may upon notice to the Lessee perform such agreement, and the amount of the reasonable cost and expenses of the Lessor incurred in connection with such performance, together with interest on such amount at the rate of 12.67% per annum shall be payable by the Lessee upon demand, except as otherwise provided in this Lease. No such performance or compliance by the Lessor shall be deemed a waiver of the rights and remedies of the Lessor or any assignee of the Lessor against the Lessee hereunder, including, without limitation, the right of the Vendor to terminate this Lease pursuant to Article 15 of the CSA and the Lease Assignment, and no such performance or compliance by the Lessor shall be deemed to cure an Event of Default hereunder for purposes of Article 15 of the CSA except as otherwise provided in Section 15(f) of the CSA.

§ 19. SEVERABILITY; EFFECT AND MODIFICATION OF LEASE

Any provision of this lease which is prohibited or unenforceable in any jurisdiction shall be, as to such jurisdiction, ineffective to the extent of such prohibition or unenforceability without invalidating the remaining

provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

Except for the Participation Agreement, the Indemnity Agreement and the CSA, this Lease exclusively and completely states the rights of the Lessor and the Lessee with respect to the leasing of the Units and supersedes all other agreements, oral or written, with respect thereto. No variation or modification of this Lease and no waiver of any of its provisions or conditions shall be valid unless in writing and signed by duly authorized signatories for the Lessor and the Lessee.

§ 20. EXECUTION

This Lease may be executed in several counterparts, such counterparts together constituting but one and the same instrument, but the counterpart delivered to the Vendor shall be deemed to be the original and all other counterparts shall be deemed duplicates thereof. Although for convenience this Lease is dated as of the date first set forth above, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgment hereto annexed.

§ 21. LAW GOVERNING

The terms of this Lease and all rights and obligations hereunder shall be governed by the laws of the State of New York; provided, however, that the parties shall be entitled to all rights conferred by 49 U.S.C. § 11303 and such additional rights arising out of the filing or hereof, if any, and of any assignment hereof as shall be conferred by the law of the several jurisdictions in which this Lease or any assignment hereof shall be filed. This Agreement is being delivered in the Cilty and State of New York and shall be effective when one or more counterparts which together have been executed by both parties shall be delivered to Cravath, Swaine & Moore in the City of New York. parties hereto hereby irrevocably consent to the jurisdiction of any federal or state court sitting in the City and State of New York in respect of any claim or dispute arising hereunder (except as to which arbitration is provided for in § 7 hereof).

IN WITNESS WHEREOF, the parties hereto have executed or caused this instrument to be executed as of the date first above written.

date first above written.	
	THE DETROIT EDISON COMPANY,
	by
	Title:
[Corporate Seal]	
Attest:	
•	
Assistant Secretary	
	THE BANK OF NEW YORK,
	by
·	Title:

	1
STATE OF MICHIGAN,)	
COUNTY OF WAYNE)	
personally appeared known, who, being by me du that one of the seals affithe corporate seal of said instrument was signed and tion by authority of its E	lay of October 1985, before me , to me personally ly sworn, says that he/she is of THE DETROIT EDISON COMPANY, xed to the foregoing instrument is corporation, and that said sealed on behalf of said corpora- loard of Directors, and he acknowl- of the foregoing instrument was the corporation.
	Notary Public
[Notarial Seal] My Commission Expires	
STATE OF NEW YORK,) COUNTY OF NEW YORK)	
instrument was signed on bauthority of its Board of	day of October 1985, before me , to me personally ely sworn, says that he/she is of The Bank of New York, that said behalf of said corporation by Directors, and he/she acknowledged foregoing instrument was the free bration.
·	
	Notary Public
[Notarial Seal] My Commission Expires	·

SCHEDULE A TO LEASE

Estimated Time and Place of Delivery	Oct-Dec, 1985, at Builder's.
Total Base Price	\$38,651.88 \$23,577,646.80
Unit Base <u>Price</u>	\$38,651.88
Lessee's Identification Numbers (Both Inclusive)	DEEX 8101-8710
Quantity	610
Builder's Plant	Greenville, Pennsylvania
Type	108 Ton, 4,320 cu. ft. Aluminum bodied-steel underframed, rotary dump, gondola rail cars
Bui.1der	Greenville Steel Car Company

152.3344479

RENTALS

Rental	Percentage of
Payment Dates	Purchase Price
1/2/87	3.2082143
7/2/87	5.2548105
1/2/88	3.0887954
7/2/88	5.3742294
1/2/89	2.9554403
7/2/89	5.5075844
1/2/90	2.8065227
7/2/90	5.656502 x -Ø
1/2/91	2.6402264
7/2/91	5.8227983
1/2/92	2.5000710
7/2/92	5.9629537
1/2/93	2.3698942
7/2/93	6.0931332
1/2/94	2.2379703
7/2/94	8.1057266
1/2/95	2.0202552
7/2/95	·
1/2/96	8.3234417
	1.8258758
7/2/96	8.5178210
1/2/97	1.6267800
7/2/97	8.7169169
1/2/98	1.4217260
7/2/98	8.9219709
1/2/99	1.0978916
7/2/99	9.2458052
1/2/00	0.6224609
7/2/00	9.7212360
1/2/01	0.0915474
7/2/01	10.2521495
1/2/02	0.000000
7/2/02	10.3436969
,,2,02	10.5430303

SCHEDULE C TO LEASE

Table 1

Rental Payment Dates		Casualty Values and Termination Values As A Percentage of Purchase Price*
1/2/87		94.5652
7/2/87		94.3705
1/2/88		95.8991
7/2/88		94.8497
1/2/89		95.7565
7/2/89		93.8036
1/2/90		94.0591
7/2/90		91.2827
1/2/91		91.3569
7/2/91	·	88.2696
1/2/92		88.3584
7/2/92		85.0278
1/2/93		85.1299
7/2/93		81.5610
1/2/94		81.6774
7/2/94		75.9983
1/2/95		76.1446
7/2/95		70.0957
1/2/96		70.2606
7/2/96		63.8535
1/2/97		64.0383
7/2/97		57.2645
1/2/98		57.4713
7/2/98	•	50.3208
1/2/99		50.6928
7/2/99		43.0834
1/2/00		43.8168
7/2/00	•	35.6463
1/2/01		36.8042
7/2/01		28.0319
1/2/02		29.0222
7/2/02		20.0000

Table 2

The percentages set forth in Table 1 of this Schedule C have been computed without regard to recapture of the Investment Tax Credit. Consequently, the Casualty Value of any Unit suffering a Casualty Occurrence on or before December 31, 1990, shall be increased by the applicable percentage of the Purchase Price set forth below:

Date	Percentage of <u>Purchase Price</u>
On or prior to 12/31/86 On or prior to 12/31/87	16.8121 13.4497
On or prior to 12/31/88	10.0873
On or prior to 12/31/89 On or prior to 12/31/90	6.7249 3.3624

SCHEDULE C TO LEASE

Rental Payment Dates	Casualty Values as a Percentage of Purchase Price	Termination Values as a Percentage of Purchase Price
1/2/87 7/2/87		
1/2/88		· ·
7/2/88		
1/2/89		
7/2/89	_	
1/2/90	[TO BE SUPPI	LIED AT
7/2/90		
1/2/91	A LATER DAT	re]
7/2/91		
1/2/92		
7/2/92		
1/2/93		
7/2/93		
1/2/94		
7/2/94 1/2/95		
7/2/95		
1/2/96		
7/2/96		
1/2/97		
7/2/97		
1/2/98		·
7/2/98	•	
1/2/99		
7/2/99		
1/2/00		
7/2/00		
1/2/01		
7/2/01		
1/2/02 7/2/02		
112102		

Certificate of Acceptance

To: The Bank of New York

Mercantile-Safe Deposit and Trust Company

Greenville Steel Car Company

I, the duly authorized representative for GREENVILLE STEEL CAR COMPANY and THE DETROIT EDISON COMPANY (the "Lessee") under the Conditional Sale Agreement and the Lease of Railroad Equipment, both dated as of October 1, 1985, respectively, do hereby certify that I inspected or have caused to be inspected and have accepted delivery thereunder of the following Units of Equipment:

TYPE OF EQUIPMENT: DATE ACCEPTED: NUMBER OF UNITS NUMBERED:

I do hereby certify that the foregoing Units are in good order and condition, and appear to conform to the specifications, requirements and standards applicable thereto as provided in Article 2 of the aforesaid Conditional Sale Agreement. I do further certify that each of the foregoing Units has been marked by means of a stencil printed in contrasting colors upon each side of each such Unit in letters not less than one inch in height as follows:

"Ownership subject to a Security Agreement filed with the Interstate Commerce Commission."

The execution of this Certificate will in no way relieve or decrease the responsibility of the Builder named below for any warranties it has made with respect to the Equipment.

BUILDER:
Greenville Steel Car Company

Authorized Representative of Vendee and Lessee

SCHEDULE C TO LEASE

Table 1

Rental Payment Dates	Casualty Values and Termination Values As A Percentage of Purchase Price*
1/2/87	94.5652
7/2/87	94.3705
1/2/88	95.8991
7/2/88	94.8497
1/2/89	95.7565
7/2/89	93.8036
1/2/90	94.0591
7/2/90	91.2827
1/2/91	91.3569
7/2/91	88.2696
1/2/92	88.3584
7/2/92	85.0278
1/2/93	85.1299
7/2/93	81.5610
1/2/94	81.6774
7/2/94	75.9983
1/2/95	76.1446
7/2/95	70.0957
1/2/96	70.2606
7/2/96	63.8535
1/2/97	64.0383
7/2/97	57.2645
1/2/98	57.4713
7/2/98	50.3208
1/2/99	50.6928
7/2/99	43.0834
1/2/00	43.8168
7/2/00	35.6463
1/2/01	36.8042
7/2/01	28.0319
1/2/02	29.0222
7/2/02	20.0000

Table 2

The percentages set forth in Table 1 of this Schedule C have been computed without regard to recapture of the Investment Tax Credit. Consequently, the Casualty Value of any Unit suffering a Casualty Occurrence on or before December 31, 1990, shall be increased by the applicable percentage of the Purchase Price set forth below:

Date	•	Percentage of Purchase Price
On or prior to On or prior to On or prior to On or prior to On or prior to	0 12/31/87 0 12/31/88 0 12/31/89	16.8121 13.4497 10.0873 6.7249 3.3624

SCHEDULE C TO LEASE

Rental Payment Dates	Casualty Values as a Percentage of Purchase Price	Termination Values as a Percentage of Purchase Price
1/2/87	·	
7/2/87		
1/2/88		.
7/2/88		·
1/2/89		
7/2/89	(mo pr cuppt	TDD 3M
1/2/90	[TO BE SUPPL	IED AT
7/2/90	* * * * * * * * * * * * * * * * * * *	
1/2/91	A LATER DAT	E
7/2/91		
1/2/92		
7/2/92		
1/2/93		
7/2/93		
1/2/94 7/2/94		·
1/2/95		•
7/2/95		
1/2/96		
7/2/96		
1/2/97		
7/2/97	•	
1/2/98	•	
7/2/98		
1/2/99		
7/2/99		
1/2/00		
7/2/00		
1/2/01		
7/2/01		
1/2/02		
7/2/0,2	· ·	

Certificate of Acceptance

To: The Bank of New York

Mercantile-Safe Deposit and Trust Company

Greenville Steel Car Company

I, the duly authorized representative for GREENVILLE STEEL CAR COMPANY and THE DETROIT EDISON COMPANY (the "Lessee") under the Conditional Sale Agreement and the Lease of Railroad Equipment, both dated as of October 1, 1985, respectively, do hereby certify that I inspected or have caused to be inspected and have accepted delivery thereunder of the following Units of Equipment:

TYPE OF EQUIPMENT: DATE ACCEPTED: NUMBER OF UNITS NUMBERED:

I do hereby certify that the foregoing Units are in good order and condition, and appear to conform to the specifications, requirements and standards applicable thereto as provided in Article 2 of the aforesaid Conditional Sale Agreement. I do further certify that each of the foregoing Units has been marked by means of a stencil printed in contrasting colors upon each side of each such Unit in letters not less than one inch in height as follows:

"Ownership subject to a Security Agreement filed with the Interstate Commerce Commission."

The execution of this Certificate will in no way relieve or decrease the responsibility of the Builder named below for any warranties it has made with respect to the Equipment.

BUILDER:

Greenville Steel Car Company

Authorized Representative of Vendee and Lessee

Annex D to CSA

ASSIGNMENT OF LEASE AND AGREEMENT dated as of October 1, 1985 (the "Assignment"), between THE BANK OF NEW YORK (the "Lessor") and MERCANTILE-SAFE DEPOSIT AND TRUST COMPANY, as Agent (the "Vendor") under a Participation Agreement dated as of the date hereof (the "Participation Agreement").

WHEREAS the Lessor is entering into a Conditional Sale Agreement dated as of the date hereof (the "CSA") with Greenville Steel Car Company (the "Builder"), providing for the sale to the Lessor of such units of railroad wquipment (the "Units") described in Annex B thereto as are delivered to and accepted by the Lessor thereunder;

WHEREAS the Lessor and The Detroit Edison Company (the "Lessee") have entered into a Lease of Railroad Equipment dated as of the date hereof (the "Lease") which provides for the leasing by the Lessor to the Lessee of the Units; and

WHEREAS, in order to provide security for the obligations of the Lessor under the CSA and as an inducement to the Vendor and the Investor (as defined in the Participation Agreement) for whom the Vendor is acting to invest in the CSA Indebtedness (as defined in Article 4 of the CSA), the Lessor has agreed to assign for security purposes certain of its right in, to and under the Lease to the Vendor.

NOW, THEREFORE, in consideration of the premises and of the payments to be made and the covenants hereinafter mentioned, the parties hereto agree as follows:

1. The Lessor hereby assigns, transfers and sets over unto the Vendor, as collateral security for the payment and performance of the obligations of the Lessor under the CSA, all the Lessor's rights, titles and interests, powers, privileges and other benefits in, to and under the Lease, including, without limitation, the immediate right to receive and collect all rentals, profits and other sums payable to or receivable from the Lessee by the Lessor under or pursuant to the provisions of the Lease whether as rent, Termination Value or Casualty Value payment, liquidated damages or otherwise (except any amounts of indemnity payable pursuant to §§ 6 and 12 of the Lease, any proceeds of public liability insurance maintained pursuant to § 7.6 of the Lease, in each case payable to the Lessor, any

amounts payable to the Lessor pursuant to the second paragraph of Section 7.6 and any indemnity payments made pursuant to the Indemnity Agreement dated as of the date hereof between the Lessee and the Lessor, collectively, "Excluded Payments") (such moneys, other than Excluded Payments, being hereinafter called the "Payments"), and the right to make all waivers, modifications and agreements, to give all notices, consents and releases, to take all action upon the happening of an Event of Default under the Lease, and to do any and all other things whatsoever which the Lessor is or may become entitled to do under or with respect to the Lease. In furtherance of the foregoing assignment, the Lessor hereby irrevocably authorizes and empowers the Vendor in its own name, or in the name of its nominee, or in the name of the Lessor or as attorney for the Lessor to ask, demand, sue for, collect and receive any and all Payments to which the Lessor is or may become entitled under the Lease, and to enforce compliance by the Lessee with all the terms and provisions thereof.

The Vendor agrees to accept any Payments made by the Lessee for the account of the Lessor pursuant to the Lease. To the extent received, the Vendor will apply such Payments first, to satisfy the obligations of the Lessor under the CSA, and second, so long as no event of default thereunder shall have occurred and be continuing, any balance shall be paid to the Lessor on the same date such Payment is applied to satisfy such obligations of the Lessor, by bank wire in immediately available Federal funds to the Lessor at such address as shall be specified to the Vendor in writing, and such balance shall be retained by the Lessor.

If the Vendor shall not receive any rental payment under the § 3 of the Lease when due, the Vendor shall notify the Lessor at its address set forth in the Lease; provided, however, that the failure of the Vendor to so notify the Lessor shall not affect the obligations of the Lessor hereunder or under the CSA.

2. The Assignment is executed only as security and, therefore, the execution and delivery of this Assignment by the Lessor shall not subject the Vendor to, or transfer, or pass, or in any way affect or modify, the liability of the Lessor under the Lease, it being agreed that, notwithstanding this Assignment or any subsequent assignment, all obligations of the Lessor to the Lessee shall be and remain enforceable by the Lessee, its successors and assigns, against, and only against, the

Annex D to CSA

ASSIGNMENT OF LEASE AND AGREEMENT dated as of October 1, 1985 (the "Assignment"), between THE BANK OF NEW YORK (the "Lessor") and MERCANTILE-SAFE DEPOSIT AND TRUST COMPANY, as Agent (the "Vendor") under a Participation Agreement dated as of the date hereof (the "Participation Agreement").

WHEREAS the Lessor is entering into a Conditional Sale Agreement dated as of the date hereof (the "CSA") with Greenville Steel Car Company (the "Builder"), providing for the sale to the Lessor of such units of railroad wquipment (the "Units") described in Annex B thereto as are delivered to and accepted by the Lessor thereunder;

WHEREAS the Lessor and The Detroit Edison Company (the "Lessee") have entered into a Lease of Railroad Equipment dated as of the date hereof (the "Lease") which provides for the leasing by the Lessor to the Lessee of the Units; and

WHEREAS, in order to provide security for the obligations of the Lessor under the CSA and as an inducement to the Vendor and the Investor (as defined in the Participation Agreement) for whom the Vendor is acting to invest in the CSA Indebtedness (as defined in Article 4 of the CSA), the Lessor has agreed to assign for security purposes certain of its right in, to and under the Lease to the Vendor.

NOW, THEREFORE, in consideration of the premises and of the payments to be made and the covenants hereinafter mentioned, the parties hereto agree as follows:

1. The Lessor hereby assigns, transfers and sets over unto the Vendor, as collateral security for the payment and performance of the obligations of the Lessor under the CSA, all the Lessor's rights, titles and interests, powers, privileges and other benefits in, to and under the Lease, including, without limitation, the immediate right to receive and collect all rentals, profits and other sums payable to or receivable from the Lessee by the Lessor under or pursuant to the provisions of the Lease whether as rent, Termination Value or Casualty Value payment, liquidated damages or otherwise (except any amounts of indemnity payable pursuant to §§ 6 and 12 of the Lease, any proceeds of public liability insurance maintained pursuant to § 7.6 of the Lease, in each case payable to the Lessor, any

amounts payable to the Lessor pursuant to the second paragraph of Section 7.6 and any indemnity payments made pursuant to the Indemnity Agreement dated as of the date hereof between the Lessee and the Lessor, collectively, "Excluded Payments") (such moneys, other than Excluded Payments, being hereinafter called the "Payments"), and the right to make all waivers, modifications and agreements, to give all notices, consents and releases, to take all action upon the happening of an Event of Default under the Lease, and to do any and all other things whatsoever which the Lessor is or may become entitled to do under or with respect to the Lease. In furtherance of the foregoing assignment, the Lessor hereby irrevocably authorizes and empowers the Vendor in its own name, or in the name of its nominee, or in the name of the Lessor or as attorney for the Lessor to ask, demand, sue for, collect and receive any and all Payments to which the Lessor is or may become entitled under the Lease, and to enforce compliance by the Lessee with all the terms and provisions thereof.

The Vendor agrees to accept any Payments made by the Lessee for the account of the Lessor pursuant to the Lease. To the extent received, the Vendor will apply such Payments first, to satisfy the obligations of the Lessor under the CSA, and second, so long as no event of default thereunder shall have occurred and be continuing, any balance shall be paid to the Lessor on the same date such Payment is applied to satisfy such obligations of the Lessor, by bank wire in immediately available Federal funds to the Lessor at such address as shall be specified to the Vendor in writing, and such balance shall be retained by the Lessor.

If the Vendor shall not receive any rental payment under the § 3 of the Lease when due, the Vendor shall notify the Lessor at its address set forth in the Lease; provided, however, that the failure of the Vendor to so notify the Lessor shall not affect the obligations of the Lessor hereunder or under the CSA.

2. The Assignment is executed only as security and, therefore, the execution and delivery of this Assignment by the Lessor shall not subject the Vendor to, or transfer, or pass, or in any way affect or modify, the liability of the Lessor under the Lease, it being agreed that, notwithstanding this Assignment or any subsequent assignment, all obligations of the Lessor to the Lessee shall be and remain enforceable by the Lessee, its successors and assigns, against, and only against, the

Lessor or persons other than the Vendor. The Lessor shall appear in and defend every action in connection with its obligations or duties under the Lease at its sole cost.

3. The Lessor represents and warrants to the Vendor that the Lessor has not entered into any assignment of its interests in the Lease other than this Assignment, has not entered into any amendment or modification of the Lease and has not created or incurred or suffered to exist with respect to the Lease or with respect to any of its interests therein any claim, lien or charge arising by, through or under the Lessor.

The Lessor agrees that it will from time to time and at all times, at the request of the Vendor or its successors or assigns, make, execute and deliver all such further instruments of assignment, transfer and assurance and do such further acts and things as may be necessary and appropriate in the premises to give effect to the provisions herein set forth and more perfectly to confirm the rights, titles and interests hereby assigned and transferred to the Vendor or intended so to be.

- 4. The Lessor will faithfully abide by, perform and discharge each and every obligation and agreement which the Lease provides is to be performed by the Lessor. Without the written consent of the Vendor, except with respect to Excluded Payments the Lessor will not anticipate the rents under the Lease or waive, excuse, condone, forgive or in any manner release or discharge the Lessee of or from the obligations, covenants, conditions and agreements to be performed by the Lessee thereunder including, without limitation, the obligation to pay the rents in the manner and at the time and place specified therein or enter into any agreement amending, modifying or terminating the Lease and the Lessor agrees that any amendment, modification or termination thereof without such consent shall be void.
- 5. The Lessor does hereby constitute the Vendor its true and lawful attorney, irrevocably, with full power (in the name of the Lessor or otherwise) to ask, require, demand and receive any and all Payments due and to become due under or arising out of the Lease to which the Lessor is or may become entitled, to enforce compliance by the Lessee with all the terms and provisions of the Lease, to endorse any checks or other instruments or orders in connection therewith and to file any claims or take any action or institute any proceedings which to the Vendor may seem to be necessary or advisable in the premises.

- 6. Upon the full discharge and satisfaction of all sums due from the Lessor under the CSA, the Lessor's assignment hereunder of its rights in, to and under the Lease shall terminate, and all estate, right, title and interest of the Vendor in and to the Lease shall revert to the Lessor. However, the Vendor, if so requested by the Lessor at that time, will (a) execute an instrument releasing its entire estate, right, title and interest to the Lessor and (b) execute, acknowledge and deliver any and all further instruments required by law or reasonably requested by the Lessor in order to confirm or further assure the interest in the Lease which shall have reverted or been so transferred to the Lessor.
- 7. The Lessor will, from time to time, execute, acknowledge and deliver any and all further instruments required by law or reasonably requested by the Vendor in order to confirm the interest of the Vendor hereunder.
- 8. The Vendor may assign all or any of the rights assigned to it hereby or arising under the Lease, including, without limitation, the right to receive any Payments due or to become due. In the event of any such assignment, any such subsequent or successive assignee or assignees shall, to the extent of such assignment, enjoy all the rights and privileges and be subject to all the obligations of the Vendor hereunder.
- 9. This Assignment shall be governed by the laws of the State of New York, but the parties shall be entitled to all rights conferred by 49 U.S.C. § 11303 and such additional rights arising out of the filing hereof, if any, as shall be conferred by the laws of the several jurisdictions in which this Assignment shall be filed.
- 10. The Lessor shall cause copies of all notices and other documents received in connection with the Lease and all payments hereunder to be promptly delivered or made to the Vendor at its address set forth in the CSA, or at such other address as the Vendor shall designate in writing.
- 11. The Vendor hereby agrees with the Lessor that the Vendor will not, so long as no event of default under the CSA has occurred and is continuing, exercise or enforce, or seek to exercise or enforce, or avail itself of, any of the rights, powers, privileges, authorizations or benefits which are assigned and transferred by the Lessor to the Vendor by this Assignment, except the right to receive and apply the payments as provided in Paragraph 1 hereof, and

Lessor or persons other than the Vendor. The Lessor shall appear in and defend every action in connection with its obligations or duties under the Lease at its sole cost.

3. The Lessor represents and warrants to the Vendor that the Lessor has not entered into any assignment of its interests in the Lease other than this Assignment, has not entered into any amendment or modification of the Lease and has not created or incurred or suffered to exist with respect to the Lease or with respect to any of its interests therein any claim, lien or charge arising by, through or under the Lessor.

The Lessor agrees that it will from time to time and at all times, at the request of the Vendor or its successors or assigns, make, execute and deliver all such further instruments of assignment, transfer and assurance and do such further acts and things as may be necessary and appropriate in the premises to give effect to the provisions herein set forth and more perfectly to confirm the rights, titles and interests hereby assigned and transferred to the Vendor or intended so to be.

- 4. The Lessor will faithfully abide by, perform and discharge each and every obligation and agreement which the Lease provides is to be performed by the Lessor. Without the written consent of the Vendor, except with respect to Excluded Payments the Lessor will not anticipate the rents under the Lease or waive, excuse, condone, forgive or in any manner release or discharge the Lessee of or from the obligations, covenants, conditions and agreements to be performed by the Lessee thereunder including, without limitation, the obligation to pay the rents in the manner and at the time and place specified therein or enter into any agreement amending, modifying or terminating the Lease and the Lessor agrees that any amendment, modification or termination thereof without such consent shall be void.
- 5. The Lessor does hereby constitute the Vendor its true and lawful attorney, irrevocably, with full power (in the name of the Lessor or otherwise) to ask, require, demand and receive any and all Payments due and to become due under or arising out of the Lease to which the Lessor is or may become entitled, to enforce compliance by the Lessee with all the terms and provisions of the Lease, to endorse any checks or other instruments or orders in connection therewith and to file any claims or take any action or institute any proceedings which to the Vendor may seem to be necessary or advisable in the premises.

- 6. Upon the full discharge and satisfaction of all sums due from the Lessor under the CSA, the Lessor's assignment hereunder of its rights in, to and under the Lease shall terminate, and all estate, right, title and interest of the Vendor in and to the Lease shall revert to the Lessor. However, the Vendor, if so requested by the Lessor at that time, will (a) execute an instrument releasing its entire estate, right, title and interest to the Lessor and (b) execute, acknowledge and deliver any and all further instruments required by law or reasonably requested by the Lessor in order to confirm or further assure the interest in the Lease which shall have reverted or been so transferred to the Lessor.
- 7. The Lessor will, from time to time, execute, acknowledge and deliver any and all further instruments required by law or reasonably requested by the Vendor in order to confirm the interest of the Vendor hereunder.
- 8. The Vendor may assign all or any of the rights assigned to it hereby or arising under the Lease, including, without limitation, the right to receive any Payments due or to become due. In the event of any such assignment, any such subsequent or successive assignee or assignees shall, to the extent of such assignment, enjoy all the rights and privileges and be subject to all the obligations of the Vendor hereunder.
- 9. This Assignment shall be governed by the laws of the State of New York, but the parties shall be entitled to all rights conferred by 49 U.S.C. § 11303 and such additional rights arising out of the filing hereof, if any, as shall be conferred by the laws of the several jurisdictions in which this Assignment shall be filed.
- 10. The Lessor shall cause copies of all notices and other documents received in connection with the Lease and all payments hereunder to be promptly delivered or made to the Vendor at its address set forth in the CSA, or at such other address as the Vendor shall designate in writing.
- 11. The Vendor hereby agrees with the Lessor that the Vendor will not, so long as no event of default under the CSA has occurred and is continuing, exercise or enforce, or seek to exercise or enforce, or avail itself of, any of the rights, powers, privileges, authorizations or benefits which are assigned and transferred by the Lessor to the Vendor by this Assignment, except the right to receive and apply the payments as provided in Paragraph 1 hereof, and

that subject to the terms of the Lease and the CSA, the Lessor may, so long as no event of default under the CSA has occurred is then continuing, exercise or enforce, or seek to exercise or enforce, its rights, powers, privileges and remedies arising out of § 10.1(a) of the Lease; provided, however, that the Lessor shall not, without the prior written consent of the Vendor, terminate the Lease or otherwise exercise or enforce, or seek to exercise or enforce, any rights, powers, privileges and remedies arising out of § 10.1(b) of the Lease.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed in their respective corporate names by officers thereunto duly authorized, and their respective corporate seals to be affixed and duly attested, all as of the date first above written.

THE BANK OF NEW YORK,

by

Title:

MERCANTILE-SAFE DEPOSIT AND TRUST COMPANY, as Agent,

by

[Corporate Seal]

Title: Vice President

Attest:

Corporate Trust Officer

STATE OF NEW YORK)	
COUNTY OF NEW YORK)	ss.:
he is an that said instrument was tion by authority of its	siq Boa	day of October 1985, before , to me by me duly sworn, says that of THE BANK OF NEW YORK and on behalf of said corpora- ard of Directors, and he acknow- the foregoing instrument was id corporation.
[Notarial Seal]		Notary Public
My Commission Expires:		
STATE OF MARYLAND COUNTY OF BALTIMORE)))	ss.:
is a Vice President of MF COMPANY, that one of the instrument is the corporathat said instrument was corporation by authority	ing ERCA sea ste siq of	by me duly sworn, says that he ANTILE-SAFE DEPOSIT AND TRUST als affixed to the foregoing seal of said corporation, and gned and sealed on behalf of said its Board of Directors, and he tion of the foregoing instrument
[Notarial Seal]		Notary Public
My Commission Expires:		

that subject to the terms of the Lease and the CSA, the Lessor may, so long as no event of default under the CSA has occurred is then continuing, exercise or enforce, or seek to exercise or enforce, its rights, powers, privileges and remedies arising out of § 10.1(a) of the Lease; provided, however, that the Lessor shall not, without the prior written consent of the Vendor, terminate the Lease or otherwise exercise or enforce, or seek to exercise or enforce, any rights, powers, privileges and remedies arising out of § 10.1(b) of the Lease.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed in their respective corporate names by officers thereunto duly authorized, and their respective corporate seals to be affixed and duly attested, all as of the date first above written.

THE BANK OF NEW YORK,

by

Title:

MERCANTILE-SAFE DEPOSIT AND TRUST COMPANY, as Agent,

by

[Corporate Seal]

Title: Vice President

Attest:

Corporate Trust Officer

STATE OF NEW YORK	
COUNTY OF NEW YORK	ss.:
he is an that said instrument was s tion by authority of its B	day of October 1985, before , to me g by me duly sworn, says that of THE BANK OF NEW YORK igned on behalf of said corpora- oard of Directors, and he acknow- of the foregoing instrument was aid corporation.
[Notarial Seal]	Notary Public
My Commission Expires:	
STATE OF MARYLAND	,
COUNTY OF BALTIMORE)	ss.:
is a Vice President of MER COMPANY, that one of the sinstrument is the corporat that said instrument was scorporation by authority of	g by me duly sworn, says that he CANTILE-SAFE DEPOSIT AND TRUST eals affixed to the foregoing e seal of said corporation, and igned and sealed on behalf of said f its Board of Directors, and he ution of the foregoing instrument
[Notarial Seal]	Notary Public
My Commission Expires:	

CONSENT AND AGREEMENT

THE DETROIT EDISON COMPANY (the "Lessee"), the lessee named in the Lease (the "Lease") referred to in the foregoing Assignment of Lease and Agreement (the "Lease Assignment"), hereby (a) acknowledges receipt of a copy of the Lease Assignment and (b) consents to all the terms and conditions of the Lease Assignment and agrees that:

- (1) it will pay all Payments, as such term is defined in Section 1 of the Lease Assignment directly to Mercantile-Safe Deposit and Trust Company, as Agent (the "Vendor"), the assignee named in the Lease Assignment, at Baltimore, Maryland, for credit for its Corporation Trust Department Account No. 620081-8 with advice that the payment is "Re: DE 10/1/85" (or at such other place as may be furnished in writing to the Lessee by the Vendor);
- (2) it shall not be entitled to any abatement of rent or additional rent, reduction thereof or setoff against or recoupment of rent or additional rent, including, but not limited to, abatements, reductions, setoffs or recoupments due or alleged to be due by reason of any past, present or future claims or counterclaims of the Lessee against the Lessor under the Lease or under the CSA referred to in the Lease Assignment, or against the Builder (as defined in the Lease Assignment) or the Vendor or otherwise;
- (3) the Vendor shall be entitled to the benefits of, and to receive and enforce performance of, all the covenants to be performed by the Lessee under the Lease as though the Vendor were named therein as the Lessor;
- (4) the Vendor shall not, by virtue of the Lease Assignment, be or become subject to any liability or obligation under the Lease or otherwise; and
- (5) the Lease shall not, without the prior written consent of the Vendor, be terminated, amended or modified, nor shall any waiver or release be given or accepted with respect thereto nor shall any action be taken or omitted by the Lessee the taking or omission of which might result in an alteration or impairment of the Lease or the Lease Assignment or this Consent and Agreement or of any of the rights created by any thereof.

This Consent and Agreement, when accepted by the Vendor by signing the acceptance at the foot hereof, shall be deemed to be a contract under the laws of the State of New York and, for all purposes shall be construed in accordance with the laws of said State.

THE DETROIT EDISON COMPANY, as Lessee,

by

Title: Vice President-Finance

[Corporate Seal]

Attest:

Assistant Secretary

The foregoing Consent and Agreement is hereby accepted, as of the 1st day of October, 1985.

MERCANTILE-SAFE DEPOSIT AND TRUST COMPANY, as Agent,

by

Title: Vice President

CONSENT AND AGREEMENT

THE DETROIT EDISON COMPANY (the "Lessee"), the lessee named in the Lease (the "Lease") referred to in the foregoing Assignment of Lease and Agreement (the "Lease Assignment"), hereby (a) acknowledges receipt of a copy of the Lease Assignment and (b) consents to all the terms and conditions of the Lease Assignment and agrees that:

- (1) it will pay all Payments, as such term is defined in Section 1 of the Lease Assignment directly to Mercantile-Safe Deposit and Trust Company, as Agent (the "Vendor"), the assignee named in the Lease Assignment, at Baltimore, Maryland, for credit for its Corporation Trust Department Account No. 620081-8 with advice that the payment is "Re: DE 10/1/85" (or at such other place as may be furnished in writing to the Lessee by the Vendor);
- (2) it shall not be entitled to any abatement of rent or additional rent, reduction thereof or setoff against or recoupment of rent or additional rent, including, but not limited to, abatements, reductions, setoffs or recoupments due or alleged to be due by reason of any past, present or future claims or counterclaims of the Lessee against the Lessor under the Lease or under the CSA referred to in the Lease Assignment, or against the Builder (as defined in the Lease Assignment) or the Vendor or otherwise;
- (3) the Vendor shall be entitled to the benefits of, and to receive and enforce performance of, all the covenants to be performed by the Lessee under the Lease as though the Vendor were named therein as the Lessor;
- (4) the Vendor shall not, by virtue of the Lease Assignment, be or become subject to any liability or obligation under the Lease or otherwise; and
- written consent of the Vendor, be terminated, amended or modified, nor shall any waiver or release be given or accepted with respect thereto nor shall any action be taken or omitted by the Lessee the taking or omission of which might result in an alteration or impairment of the Lease or the Lease Assignment or this Consent and Agreement or of any of the rights created by any thereof.

This Consent and Agreement, when accepted by the Vendor by signing the acceptance at the foot hereof, shall be deemed to be a contract under the laws of the State of New York and, for all purposes shall be construed in accordance with the laws of said State.

THE DETROIT EDISON COMPANY, as Lessee,

by

Title: Vice President-Finance

[Corporate Seal]

Attest:

Assistant Secretary

The foregoing Consent and Agreement is hereby accepted, as of the 1st day of October, 1985.

MERCANTILE-SAFE DEPOSIT AND TRUST COMPANY, as Agent,

by

Title: Vice President